



TTAB

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September 15, 2009

**VIA EXPRESS MAIL**

Trademark Trial and Appeal Board  
U.S. Patent and Trademark Office  
P.O. Box 1451  
Alexandria, VA 22313-1451

Attention: Cheryl Goodman, Interlocutory Attorney

#78751105

**Re: UMG Recordings, Inc., Opposer v. Mattel, Inc., Applicant**  
**Opposition No.: 91176791**

Dear Ms. Goodman,

Enclosed please find the following documents in connection with the above-referenced  
Opposition:

- (1) Trial Declaration of Peter Caparis;
- (2) Notice of Reliance re: Printed Publications
- (3) Notice of Reliance re: Official Records

Sincerely,

Alexa L. Lewis  
MITCHELL SILBERBERG & KNUPP LLP



09-15-2009

Enclosures – As noted.

U.S. Patent & TM Office Mail Room #70



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/751,105  
Published for Opposition in the OFFICIAL GAZETTE on December 12, 2006

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UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.,

Applicant

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**NOTICE OF RELIANCE RE: OFFICIAL RECORDS**

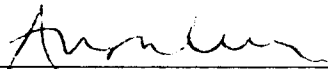


Pursuant to 37 C.F.R. §2.122(e), Opposer UMG Recordings, Inc. hereby makes of record and notifies Applicant of its reliance on the following official records capable of ready determination by resort to sources whose accuracy cannot reasonably be questioned, and are offered to rebut Applicant's evidence by showing the history and fame of the MOTOWN mark and the public's association of the MOTOWN mark with Opposer and its predecessors. True and correct copies of photocopies of which are attached hereto as Exhibits A and B, and Opposer asks the Board to take judicial notice thereof:<sup>1</sup>

- (1) UMG Recordings, Inc. v. O'Rourke, -- U.S.P.Q. 2d -- (T.T.A.B. 2009).
- (2) Three Boys Music Corp. v. Bolton, 212 F.3d 477 (9th Cir. 2000).

Respectfully submitted,

Date: September 15, 2009



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<sup>1</sup> Courts routinely and uniformly take judicial notice of legal opinions publicly filed in other cases. See Holder v. Holder, 305 F.3d 854, 866 (9th Cir. 2002) (judicial notice of state court of appeal opinion and briefs); MGIC Indem. Corp. v. Weisman, 803 F.2d 500, 504 (9th Cir. 1986) (judicial notice of motion to dismiss filed in another case; "we may take judicial notice of matters of public record outside the pleadings"); Egan v. Teets, 251 F.2d 571, 578-79 (9th Cir. 1957) (judicial notice of "record in the prior district court proceedings").



**UMG RECORDINGS, INC. v. MATTEL, INC.  
OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT A  
TO NOTICE OF RELIANCE RE: OFFICIAL RECORDS**



Hearing:  
May 26, 2009

**This Opinion is a  
Precedent of the TTAB**

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

UMG Recordings, Inc., substituted for Universal Music Group  
v.  
Charles O'Rourke

Opposition No. 91178937  
to application Serial No. 78918694  
filed on June 28, 2006

David Donahue and Michael Chiappetta of Fross Zelnick  
Lehrman & Zissu, P.C. for Universal Music Group.

Lynne Petillo and Douglas J. Katich of Ansell Zaro Grimm &  
Aaron PC for Charles O'Rourke.

Before Seeherman, Rogers and Mermelstein, Administrative  
Trademark Judges.

Opinion by Rogers, Administrative Trademark Judge:

Applicant Charles O'Rourke seeks registration of the  
mark displayed below for goods identified as "Beanies; Caps;  
Footwear; Hats; Headbands; Headwear; Jackets; Jogging suits;  
Pajamas; Polo shirts; Pullovers; Short-sleeved or long-  
sleeved t-shirts; Shorts; Suits; Sweat pants; Sweat shirts;  
Swimsuits; T-shirts; Tank tops; Trunks; Underwear;  
Wristbands." The application is based on applicant's claim



of use of the mark in commerce, with May 1, 2006 asserted as the date of first use and first use in commerce; and the application includes a disclaimer of exclusive right to use of the term "clothing."<sup>1</sup>



#### ***The Pleadings and Stipulations***

A notice of opposition to registration of the mark was filed variously listing as opposer Universal Music Group (in the ESTTA<sup>2</sup> cover sheet) and UMG Recordings, Inc. (throughout the attached statement of grounds). That pleading relies on ownership of various registrations for the mark MOTOWN, and asserted claims under Trademark Act Section 2(d) (prior registration, priority of use and likelihood of confusion,

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<sup>1</sup> As shown on the original specimen of use, the mark is not a "reversal," i.e., white letters set against a black or dark background. Rather, the mark appears as light colored lettering displayed across the front of a baseball cap, with the word clothing appearing in black or darker lettering against the lighter coloring of the rest of the mark. A substitute specimen also shows the mark in colored lettering, without a rectangular background, and the word clothing in white lettering. Applicant explained that the substitute specimen is a label affixed to the goods. After it was filed, the examining attorney withdrew a refusal to register the mark on the ground that it constitutes mere ornamental matter appearing on the goods.

<sup>2</sup> ESTTA is the Board's electronic filing system.



hereafter, the likelihood of confusion claim) and under Section 43(c) (dilution). More specifically, opposer claims use of its MOTOWN mark for "pre-recorded audio and video tapes and cassettes, DVDs, CDs, and phonograph records featuring music and entertainment; and musical and theatrical sound and video recordings," for "clothing, footwear and headgear," and "entertainment services, promotion and distribution of musical and theatrical sound and video recordings," all beginning prior to applicant's asserted date of first use. In addition, the notice of opposition claims ownership of two registrations and three pending applications for the MOTOWN mark. The registrations are both for the word mark MOTOWN in standard character form and cover, respectively, "providing popular musical entertainment" and "restaurant services."

As for the designation of opposer, the ESTTA cover sheet listing Universal Music Group as the opposer and the statement of grounds for the opposition listing UMG Recordings, Inc. (hereinafter may be referred to as UMG) clearly are inconsistent. The statement of grounds asserts that the use of the pleaded MOTOWN marks has been by "opposer, its affiliates and its predecessors in interest (collectively, the 'UMG entities')," and the statement's signature line lists UMG Recordings, Inc., "c/o Universal Music Group." Throughout the proceeding, the ESTTA cover



sheets for the parties' respective filings have listed Universal Music Group as the opposer, but attached documents, including all submissions by opposer and applicant, have listed opposer as UMG Recordings, Inc.<sup>3</sup> Accordingly, we consider the parties to have agreed that UMG Recordings, Inc. (hereafter UMG) is the opposer of record.<sup>4</sup> However, in some of our references to opposer's history and legacy in the music industry, references to opposer or to "Motown" should be read to include the various entities related to opposer and its predecessors in interest.<sup>5</sup>

In his answer applicant admitted "that the Opposer is the owner of record" of the pleaded registrations and applications. Apart from this admission, applicant effectively denied the pleaded grounds and asserted what are denominated as affirmative defenses; but these are not true affirmative defenses and we construe them to be mere amplifications of applicant's denial of opposer's claims.

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<sup>3</sup> After institution of a proceeding, when a party submits a filing via ESTTA, the ESTTA cover sheet is automatically "pre-populated" with the name of the party listed in TTABIS, the Board's docket of electronic proceeding files.

<sup>4</sup> The certified copies of opposer's pleaded registrations, made of record during trial, list UMG Recordings, Inc. as the owner.

<sup>5</sup> There have been many assignments involving Motown entities, particularly as relates to copyrights and trademarks for musical and video recordings. There is not, however, any question raised in this proceeding about chain of title, validity of assignments, or the related nature of the various Motown entities that have existed over the years.



The parties filed a stipulated agreement for protecting confidential information as well as a stipulation allowing both introduction of documents produced by the parties from their respective files as "authentic business records" and introduction of testimony by sworn declaration.

**The Record**

Opposer included in its main brief on the case a listing of evidence, which applicant did not contest; and applicant did not include his own recitation of evidence of record. Accordingly, we accept as accurate opposer's statement of the record.

The record includes declaration testimony and exhibits offered on behalf of opposer from Michael Reinert, Executive Vice President, Business & Legal Affairs of Universal Motown Records Group (an unincorporated division of UMG),<sup>6</sup> Lori Froeling, former Senior Vice President, Business & Legal Affairs of Universal Music Enterprises (also an unincorporated division of UMG),<sup>7</sup> Deanna Czapla, Retail Operations Manager and Buyer for Delaware North Companies Travel Hospitality Services, Inc. (a licensee of opposer's MOTOWN mark for clothing and other merchandise), and Mario Ortiz, a paralegal for opposer's counsel. Opposer also

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<sup>6</sup> Mr. Reinert presented both main and rebuttal testimony.

<sup>7</sup> Ms. Froeling worked for Universal Music Enterprises at the time she provided her testimony.



filed two notices of reliance, one for the introduction of information regarding registrations, applications and other official records, and the other for introduction of certain interrogatory responses by applicant. Applicant Charles O'Rourke submitted his own testimony, and opposer then exercised its right under the parties' stipulation to conduct live cross-examination of Mr. O'Rourke. Both the direct and cross-examination testimony is of record. Finally, applicant filed a notice of reliance on opposer's interrogatory responses.

**Questions Presented**

In its main brief (pp. 14-15), opposer lists the only question presented as whether there exists a likelihood of confusion, and we therefore consider opposer to have waived its dilution claim. Thus, to the extent opposer is correct in its allegation that applicant has conceded the fame of opposer's MOTOWN mark, applicant will be considered to have only conceded the type of fame relevant to a likelihood of confusion analysis.<sup>8</sup> Opposer also asserts in its brief that there is no dispute as to opposer's priority, and applicant neither contests the point in his brief nor presents any argument regarding priority. Therefore, to the extent

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<sup>8</sup> *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) (contrasts fame for likelihood of confusion analysis and for dilution analysis).



opposer relies on prior use of its mark in commerce, rather than on its registrations for the mark, we consider the question of opposer's priority to be undisputed. We do not, however, consider applicant to have specifically conceded opposer's prior use of the MOTOWN mark for clothing items.<sup>9</sup> We address, *infra*, what the record shows about such use but before commencing such analysis, we address issues relating to opposer's pleading of various registrations of, and applications seeking registration of, its MOTOWN mark.

***Opposer's Registrations, Standing***

In his brief (p. 3), applicant contends that "Opposer does not own a registered mark in the class of goods for which Applicant has applied, i.e. apparel." However, one of the applications pleaded in the notice of opposition, serial no. 77/045567, covers numerous items of footwear, headwear and clothing, for both adults and children. Such application resulted in issuance of registration no. 3550672, albeit on December 23, 2008, after applicant's brief had been filed in this case.<sup>10</sup> Opposer made the

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<sup>9</sup> See testimony declaration of Charles O'Rourke [O'Rourke dec.] at paragraph 13: "Opposer's Mark is familiar to the baby boomer age group, and in the recording industry, not the clothing industry."

<sup>10</sup> The full identification for this registration is "Footwear; shoes; ties; hats; caps; jackets; scarves; shirts; visors; sweat shirts; sweat pants; sweat jackets; sweaters; t-shirts; tank tops; tops; wrist bands; and children[']s clothing, namely, infantwear, headwear, shirts, t-shirts, tank tops, cloth bibs, sweat shirts."



application of record by notice of reliance during its testimony period, as an "official record." See Trademark Rule 2.122(e). In its main brief (pp. 11-12), opposer included a request that the Board take judicial notice of any registration that might issue before issuance of a final decision in this case. In its reply brief (p. 3, n. 3), opposer noted both that the anticipated registration had issued and that applicant, in his response brief, did not object to opposer's request in its main brief that judicial notice be taken of the anticipated registration. Opposer concluded that the registration should therefore be considered of record.

After briefing was completed, opposer received from the USPTO a "status and title copy" of the registration that it had ordered promptly upon issuance of the registration.<sup>11</sup> That copy was filed with the Board after the completion of briefing under cover of a request that the Board take judicial notice of the registration.

The particular circumstances under which opposer pleaded its ownership of its application to register MOTOWN for various clothing items, obtained a registration after trial, and submitted a certified copy showing status and

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<sup>11</sup> A "status and title copy" of an issued registration is a copy of the registration, prepared by the USPTO, which indicates the status of the registration and the last recorded owner, according to USPTO Assignment Branch records.



title after briefing are unlike those presented by other precedential decisions involving initial pleading of a pending application. Accordingly, we address in some detail whether to consider the registration to be of record or whether we may take judicial notice of it.

As noted, the pending application was referenced in the notice of opposition and applicant admitted opposer's ownership of such. Such an admission, however, does not dictate that the resulting registration is automatically of record whenever it should issue. An admission obviates the need to prove the admitted allegation of fact, but no more. Thus, had a registration issued prior to trial, applicant's admission would not have excused opposer from the need to make the registration properly of record.<sup>12</sup>

Arguing for consideration of its registration, opposer relies in part on the fact that applicant did not object to opposer's submission of the application by notice of

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<sup>12</sup> In contrast, while an opposer that pleads ownership of an application would have to make any subsequently issued registration of record, it would not have to amend its notice of opposition prior to doing so. The pleading of the application would be viewed as having provided sufficient notice to the applicant that the opposer would rely on a registration from the application for its likelihood of confusion claim. Cf. *Standard Knitting Ltd. v. Toyota Jidosha Kabushiki Kaisha*, 77 USPQ2d 1917, 1919-20 (TTAB 2006). In *Standard Knitting*, the notice of opposition put applicant on notice of opposer's reliance on a pending application, and applicant later amended its counterclaim to seek cancellation of the registration that issued based on the pending application. In contrast, when at trial opposer introduced an unpleaded registration by notice of reliance, applicant's objection to it was sustained. *Id.*



reliance. But a copy of a pending application is admissible as an official record and could scarcely be objected to merely because it was introduced at trial. See *Life Zone Inc. v. Middleman Group Inc.*, 87 USPQ2d 1953, 1957 (TTAB 2008) (copy of opposer's pending application admissible under notice of reliance as official record).

Next, opposer argues that applicant did not object to the request in opposer's brief that the Board take judicial notice of the anticipated registration, but this argument is unavailing. First, applicant did assert in his responsive brief that opposer did not have a registration for its mark for apparel items. This must be taken as an indication that applicant viewed the introduction of the application as insufficient to make the anticipated registration of record. Second, even though applicant did not specifically object to opposer's request that the Board take judicial notice, it is well settled that the Board does not take judicial notice of USPTO records. See *Corporate Fitness Programs Inc. v. Weider Health and Fitness Inc.*, 2 USPQ2d 1682, 1683-84, n.3 (TTAB 1987) ("The Board does not take judicial notice of registrations that reside in the Patent and Trademark Office."). Given this established practice, we cannot conclude that applicant's failure to contest opposer's request constituted his agreement that the Board could take judicial notice of the anticipated issuance of a



registration. See *Edison Brothers Stores, Inc. v. Brutting E.B. Sport-International GmbH*, 230 USPQ 530, 531 n.8 (TTAB 1986) ("Brutting's motion, filed after it received opposer's main brief, requesting us to make its [registration] part of the record of this proceeding is denied.... That opposer did not object is also of no consequence. A party is obviously not required to object to evidence which has not been proffered in accordance with our rules.").

Opposer's final effort to have the registration made of record was its submission, after completion of briefing, of the status and title copy that it had obtained from the USPTO, with a request that the Board take judicial notice of it. We deny the request for the reasons explained above in regard to the request for judicial notice included in opposer's brief. See also, *Jean Patou Inc. v. Theon Inc.*, 18 USPQ2d 1072, 1075 (TTAB 1990). In *Jean Patou*, during its testimony period, the opposer had put into the record a poor photocopy of a four-year old status and title copy of a pleaded registration and, one week later, but after the close of the testimony period, filed a supplemental notice of reliance with a current status and title copy prepared by the USPTO. The Board refused applicant's request to strike the timely notice of reliance, though it noted that the question of the competency of a poor photocopy of a four-year old status and title copy remained; but the Board



granted applicant's request to strike the notice of reliance submitted after the testimony period had closed. *Id.* at 1075-76.<sup>13</sup>

In sum, applicant's admission during pleading of opposer's ownership of its application to register the MOTOWN mark for various items of clothing did not make the resulting registration of record, and we deny each of opposer's requests that we take judicial notice of such registration. Notwithstanding that we therefore do not have this registration properly before us, because opposer properly made of record other registrations for the mark MOTOWN, it has established its standing to oppose the involved application. See *Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); see also, *Ritchie v. Simpson*, 170 F.3d 1092, 50 USPQ2d 1023, 1025 (Fed. Cir. 1999). Moreover, opposer is entitled to rely upon the evidence it introduced to show use of the mark MOTOWN for clothing items. *Corporate Fitness*, supra, 2 USPQ2d at 1683-84 n.3. We turn, then, to consider the evidence regarding use of the parties' respective marks for clothing. We acknowledge that opposer is relying on two

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<sup>13</sup> Though the opposer in *Jean Patou* also argued that its supplemental notice of reliance should be considered timely because it had requested an extension of its testimony period, the Board rejected this argument because the opposer had not requested a general extension but only an extension for the limited purpose of completing a testimony deposition. *Jean Patou*, 18 USPQ2d at 1075.



registrations of its mark for "providing popular musical entertainment" services and "restaurant services", but if the record reveals prior use by opposer of its mark(s) for clothing items, that presents the strongest case for likelihood of confusion.<sup>14</sup>

***Priority of Use as to Clothing***

Applicant is entitled to rely on the filing date of his involved application, or whatever date of first use is established by the evidence of record. The filing date of the application is June 28, 2006. The application asserts that applicant first used his MTOWN and design mark on the goods listed in the application as of May 1, 2006. In their respective briefs, both parties recite these dates, but opposer refers to the asserted date of first use as "alleged" and clearly considers it subject to proof. See opposer's brief, pp. 15-16. Applicant, however, has not put any evidence in the record to substantiate the date of first use. For example, neither the O'Rourke declaration nor the transcript of the in-person cross-examination of the witness includes any discussion of the date on which applicant first began to use his mark for the identified goods.

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<sup>14</sup> Nonetheless, the fame of opposer's mark in the music industry influences our decision in this case, as discussed *infra*, for when evidence of fame of a mark is present it is always of significance. See *Recot Inc. v. M.C. Becton*, 214 F.3d 1322, 54 USPQ2d 1894, 1897 (Fed. Cir. 2000).



The only reference to use by applicant of his mark on May 1, 2006 is the allegation of such use in the application; and it is well-settled that, although an opposed application is automatically part of the record for the opposition, the allegations contained therein are not evidence in the opposition. See Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b) ("The allegation in an application for registration ... of a date of use is not evidence on behalf of the applicant [and] must be established by competent evidence."); see also, authorities discussed in TBMP section 704.04. Accordingly, the earliest date on which applicant may rely is the June 28, 2006 filing date of his application.

Opposer, in contrast, has put substantial evidence in the record establishing its use of various marks featuring a capital letter M and MOTOWN, for clothing items sold by licensees. In particular, and as noted earlier in the description of the record, opposer presented declaration testimony from Deanna Czapla, Retail Operations Manager and Buyer for a licensee of opposer who testified from her own knowledge and her review of records and documents of the licensee. Czapla dec. ¶ 2. Czapla is responsible for "the business affairs and operation of the Motown Music Review store" in the Detroit Metro Airport. Id. ¶ 1. Czapla further testified as to the parties to the original



licensing agreement, the subsequent change of name of the licensee, and introduced a copy of the agreement, which lists opposer as the general partner of the licensor. Czapla dec. ¶¶ 3-4, exh. 1. The store opened in 2002 and offers for sale "an array of clothing and merchandise bearing the MOTOWN marks, including, for example, short-sleeved and long-sleeved shirts, sweatshirts, pull-overs, jackets and hats," and photographs of the store and merchandise are exhibits to the declaration. Czapla dec. ¶¶ 5-6, exhs. 2-3. While we cannot report the sales figures for the store because they are protected by the parties' confidentiality agreement, suffice it to say that sales since 2003 have been continuous and substantial.

In addition to the Czapla declaration, opposer also presented declaration testimony of Lori Froeling, Senior Vice President of a division of opposer, and the individual responsible for, among other activities, licensing of trademarks for the "Motown" recording label. Froeling dec. ¶ 1. Based on her personal knowledge or familiarity with records and documents, Froeling testified that the MOTOWN marks have been used for "a wide range of goods and services" including "clothing, headwear and footwear." Froeling dec. ¶¶ 2-3. A licensing arrangement beginning in 1988 with the Motown Historical Museum covers the sale of clothing bearing the MOTOWN marks both in the museum gift



shop and on its website, [www.motownmuseum.com](http://www.motownmuseum.com). Froeling dec. ¶ 8, exhs. 18-20. Another arrangement, beginning March 3, 1999, involves sales of MOTOWN branded clothing at the Motown Café Orlando in Orlando, Florida. Froeling dec. ¶ 9, exh. 21. And the Froeling declaration corroborates the Czapla declaration regarding sales of licensed clothing at the Detroit airport. Froeling dec. ¶ 10.

All of these activities predate the filing date of applicant's application and are sufficient to establish opposer's priority of use of various versions of its MOTOWN mark, some with a large uppercase M, for clothing items. We therefore turn to the question of likelihood of confusion.

***Likelihood of Confusion***

The record created by opposer is substantial, especially as it relates to the history of "Motown" records and music and the public recognition and fame of "Motown" recordings and performing artists. While there are many factors which are considered as part of the likelihood of confusion analysis when there is evidence of record bearing on such factors, see *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973), and *In re Majestic Distilling Company, Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003), in the case at hand the similarities in the marks, the use of the marks for many identical items, and the overlap in channels of trade and classes of



consumers are the most significant. See *Han Beauty, Inc. v. Alberto-Culver Co.*, 236 F.3d 1333, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001) ("While it must consider each factor for which it has evidence, the Board may focus its analysis on dispositive factors, such as similarity of the marks and relatedness of the goods."). The fame of opposer's marks in the music industry also has some effect on our analysis.

Applicant seeks to register his mark for various items of clothing, headwear and footwear, as listed at the outset of this opinion. Opposer's evidence demonstrates use of opposer's MOTOWN or M MOTOWN marks for short-sleeved and long-sleeved t-shirts, sweatshirts and baseball-style caps, all items included in applicant's identification of goods. Thus, the parties' goods are in part identical and are otherwise closely related apparel items.<sup>15</sup> When marks are used on identical goods, the marks do not have to be as similar, to support a conclusion that confusion among consumers is likely, as they would have to be if the goods were different. See *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed.

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<sup>15</sup> Although dated after applicant's filing date, another license in the record shows that opposer has expanded into footwear by licensing its marks for use by a footwear manufacturer. See Froeling dec. ¶ 11, exhs. 22-23. While opposer has not demonstrated prior use on footwear, opposer's natural expansion into this field serves to demonstrate the relationship between the apparel items for which opposer has demonstrated its priority and footwear, which is among the items identified in applicant's identification of goods.



Cir. 1992) ("When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion declines.").

When comparing the marks, we must consider the appearance, sound, connotation and commercial impression of each mark. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005). Moreover, it is a well-established principle that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, while the marks are compared in their entireties, including descriptive or disclaimed portions thereof, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entireties. Indeed, this type of analysis appears to be unavoidable." *In re National Data Corp.*, 732 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). In the case at hand, we give little weight to the inclusion of the disclaimed word CLOTHING in applicant's mark. It is much smaller than MTOWN and would not be viewed as distinctive and an indicator of source, for it is a generic term for applicant's identified goods.

As for the appearances of the involved marks, the capital letter M is stressed in applicant's mark, because of



its comparatively larger size, and is distinguishable from the remainder in that the M has more rounded edges than does the word TOWN. Opposer's MOTOWN marks for clothing generally present the letters in equal size and the same font. Some displays, however, are similar to the display and font employed by applicant. See, for example, Froeling exh. 19, which shows a sweatshirt with Motown in a script form with an underscoring flourish similar to the extension of applicant's capital M under the word TOWN. The same exhibit also illustrates use of opposer's M MOTOWN mark which stresses the letter M. And the entire record shows use by opposer of various M MOTOWN marks that similarly stress a large M. While the involved marks have some differences in appearance, they also have similarities.

In comparing the pronunciation of the marks, it is a reasonable conclusion that many will articulate applicant's mark MTOWN as "EM TOWN." As for opposer's mark MOTOWN, as applicant acknowledges, consumers pronounce it as "MOW TOWN." For consumers who will speak opposer's M MOTOWN mark, it is reasonable to conclude they will articulate it as "EM MOW TOWN," but they may also refer to it as the "MOW TOWN EM." As with the appearances of the marks, the sounds of the marks have some differences but also significant similarities.



As for the connotations of the marks, for those who know the history of "Motown" records and performers, and the record is substantial that the "Motown" legacy and contributions to the music industry are well-known, the connotation of opposer's marks will mirror that history and legacy. In this regard, we note that opposer's licensees and franchisees not only sell MOTOWN branded clothing but utilize décor and memorabilia evocative of the legions of "Motown" artists, performers and recordings. Applicant contends (brief, p. 6) that the connotation of his mark will be distinctly different because the M in applicant's mark "is an abbreviation for the 'Middle' in 'Middletown,' New Jersey" and therefore connotes hometown pride in that place and in other towns whose names begin with the letter M. Although the record reveals that applicant has only sold clothing items in New Jersey, his identification of goods is unlimited as to classes of consumers or channels of trade or geographic scope. Because we must therefore assume that the goods will be marketed in all customary channels of trade for, and to all customary consumers for, clothing items, see *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990), consumers outside applicant's hometown are unlikely to equate MTOWN with Middletown, New Jersey. Even if we accept applicant's argument that consumers who reside in or near



towns beginning with the letter M may associate applicant's mark with such places, consumers who do not reside in such places may view the mark as having the same connotation as opposer's marks, because of opposer's use not only of MOTOWN marks but of marks that feature a large letter M. In short, many consumers may find the marks to have the same or very similar connotations.

The overall commercial impressions of the marks is a consideration "occasionally used as a proxy for the ultimate conclusion of similarity or dissimilarity." *Palm Bay*, supra, 73 USPQ2d at 1692. In the case at hand, however, we specifically consider commercial impression as a distinct consideration when comparing the marks. Even though applicant overcame an initial refusal of registration based on the ornamental nature of the MTOWN CLOTHING mark, as shown by the original specimen of use, the fact remains that the record is replete with evidence showing that both parties' marks tend to be emblazoned across the fronts of items such as shirts and caps. Indeed, applicant essentially argues that his goods are bought to be worn as displays of hometown pride. When used in this way, the marks have very similar commercial impressions, and both are used in ways that turn a spotlight on the letter M. Overall, while the marks may have some dissimilarities as to sound or appearance, their connotations and overall



commercial impressions are likely to be the same for many consumers. *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 62 USPQ2d 1001, 1003-04 (Fed. Cir. 2002) (holding that PACKARD TECHNOLOGIES and HEWLETT PACKARD differ in appearance and sound, but the marks convey a similar commercial impression because consumers would be aware of Hewlett-Packard's heavy involvement in technology-based goods, and therefore the marks are similar in their entirety). See also, *Ava Enterprises Inc. v. Audio Boss USA Inc.*, 77 USPQ2d 1783 (TTAB 2006) (likelihood of confusion found when stylized marks "Audio Bss USA" and "Boss Audio Systems," were used on legally identical or otherwise closely related goods, because of similarities in display of marks and overall commercial impression).

Turning to the classes of consumers and channels of trade for the involved goods, we have already noted, above, that applicant's identification is not limited and we must assume that his goods can be marketed to all customary consumers of the identified clothing, headwear and footwear items. This class of consumers would include the same class of consumers to whom opposer's identical goods are sold, i.e., any members of the general public who visit the stores or web sites of opposer's licensees or franchisees who are selling MOTOWN branded clothing at retail. Similarly, we must assume that marketing of applicant's goods can or will



occur in all normal channels of trade for such items. This would include retail stores featuring clothing items and sales on the internet, which, as the record shows, are means by which opposer's licensed goods are marketed.

Accordingly, there is an overlap in the parties' classes of consumers and channels of trade.

The last *du Pont* factor which we consider is the fame of opposer's MOTOWN mark in the music industry, a fact which applicant has admitted. While we have already stated that we do not view applicant as having conceded the fame of opposer's mark for clothing items, we note that opposer's licensed or franchised operations may utilize décor and displays of memorabilia that draw an association between opposer's history in the music industry and the items marketed in locations such as the Motown Music Review store in the Detroit airport and the Motown Café Orlando. Opposer's mark is famous for musical recordings and performances, and opposer has demonstrated that such fame has been exploited by its use of the mark on collateral products, including clothing. See *Turner Entertainment Co. v. Nelson*, 38 USPQ2d 1942, 1944 (TTAB 1996) for a discussion of cases involving use of a famous or well-known mark on collateral products. As a result, consumers familiar with opposer's famous music industry marks, including the various MOTOWN and M MOTOWN marks, when subsequently confronted with



**Opposition No. 91178937**

clothing items adorned with applicant's mark would likely conclude it was another variation on the marks used by or authorized by opposer for such goods.

Considering all the evidence of record, whether specifically discussed herein or not, and balancing all the *du Pont* factors, we conclude that there exists a likelihood of confusion among consumers.

Decision: The opposition is sustained and registration to applicant is refused.



**UMG RECORDINGS, INC. v. MATTEL, INC.  
OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT B  
TO NOTICE OF RELIANCE RE: OFFICIAL RECORDS**





LEXSEE 212 F.3D 477

**THREE BOYS MUSIC CORPORATION, Plaintiff-Appellee, v. MICHAEL BOLTON, individually and d/b/a MR. BOLTON'S MUSIC, INC.; ANDREW GOLDMARK; NON-PAREIL MUSIC, INC.; WARNER-CHAPPELL MUSIC LIMITED; WARNER-TAMERLANE PUBLISHING CORP.; WB MUSIC CORP.; and SONY MUSIC ENTERTAINMENT, INC., Defendants-Appellants.**

Nos. 97-55150, 97-55154

**UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT**

*212 F.3d 477; 2000 U.S. App. LEXIS 9163; 54 U.S.P.Q.2D (BNA) 1720; Copy. L. Rep. (CCH) P28,082; 2000 Cal. Daily Op. Service 3651; 2000 Daily Journal DAR 4885*

**October 5, 1999, Argued and Submitted, Pasadena, California  
May 9, 2000, Filed**

**SUBSEQUENT HISTORY:** **[\*\*1]** Certiorari Denied January 22, 2001, Reported at: *2001 U.S. LEXIS 800*.

**PRIOR HISTORY:** Appeals from the United States District Court for the Central District of California. D.C. No. CV-92-01177 LGB. Lourdes G. Baird, District Judge, Presiding.

**DISPOSITION:** AFFIRMED.

**COUNSEL:** Robert G. Sugarman, Weil, Gotshal & Manges, New York, New York, for the defendants-appellants.

Russell J. Frackman, Mitchell, Silberberg & Knupp, Los Angeles, California, for the defendant-appellant.

Pierce O'Donnell, O'Donnell & Shaeffer, Los Angeles, California, for the plaintiff-appellee.

John P. McNicholas, McNicholas & McNicholas, Los Angeles, California, for the plaintiff-appellee.

Louis Petrich, Leopold, Petrich, & Smith, Los Angeles, California, for amici, Recording Industry Association of America, Inc. and Motion Picture Association of America, Inc.

**JUDGES:** Before: Betty B. Fletcher, Dorothy W. Nelson, and Melvin Brunetti, Circuit Judges. Opinion by D.W. Nelson.

**OPINION BY:** Dorothy W. Nelson

**OPINION**

**[\*480]** D.W. NELSON, Circuit Judge:

In 1994, a jury found that Michael Bolton's 1991 pop hit, "Love Is a Wonderful Thing," infringed on the copyright of a 1964 Isley Brothers' song of the same name. The district court denied Bolton's motion for a new trial and affirmed the jury's award of \$ 5.4 million.

**[\*\*2]** Bolton, his co-author, Andrew Goldmark, and their record companies ("Sony Music") appeal, arguing that the district court erred in finding that: (1) sufficient evidence supported the jury's finding that the appellants had access to the Isley Brothers' song; (2) sufficient evidence supported the jury's finding that the songs were substantially similar; (3) subject matter jurisdiction existed based on the Isley Brothers registering a complete copy of the song; (4) sufficient evidence supported the jury's attribution of profits to the infringing elements of the song; (5) Sony Music could not deduct its tax liability; and (6) the appellants' motion for a new trial based on newly discovered evidence was unwarranted.



We affirm.

## I. BACKGROUND

The Isley Brothers, one of this country's most well-known rhythm and blues groups, have been inducted into the Rock and Roll Hall of Fame. They helped define the soul sound of the 1960s with songs such as "Shout," "Twist and Shout," and "This Old Heart of Mine," and they mastered the funky beats of the 1970s with songs such as "Who's That Lady," "Fight the Power," and "It's Your Thing." In 1964, the Isley Brothers wrote and recorded "Love [\*\*3] is a Wonderful Thing" for United Artists. The Isley Brothers received a copyright for "Love is a Wonderful Thing" from the Register of Copyrights on February 6, 1964. The following year, they switched to the famous Motown label and had three top-100 hits including "This Old Heart of Mine."

Hoping to benefit from the Isley Brothers' Motown success, United Artists released "Love is a Wonderful Thing" in 1966. The song was not released on an album, only on a 45-record as a single. Several industry publications predicted that "Love is a Wonderful Thing" would be a hit - "Cash Box" on August 27, 1966, "Gavin Report" on August 26, 1966, and "Billboard" on September 10, 1966. On September 17, 1966, Billboard listed "Love is a Wonderful Thing" at number 110 in a chart titled "Bubbling Under the Hot 100." The song was never listed on any other Top 100 charts. In 1991, the Isley Brothers' "Love is a Wonderful Thing" was released [\*\*481] on compact disc. *See Isley Brothers, The Isley Brothers - The Complete UA Sessions*, (EMI 1991).

Michael Bolton is a singer/songwriter who gained popularity in the late 1980s and early 1990s by reviving the soul sound of the 1960s. Bolton has orchestrated this [\*\*4] soul-music revival in part by covering old songs such as Percy Sledge's "When a Man Love a Woman" and Otis Redding's "(Sittin' on the) Dock of the Bay." Bolton also has written his own hit songs. In early 1990, Bolton and Goldmark wrote a song called "Love Is a Wonderful Thing." Bolton released it as a single in April 1991, and as part of Bolton's album, "Time, Love and Tenderness." Bolton's "Love Is a Wonderful Thing" finished 1991 at number 49 on Billboard's year-end pop chart.

On February 24, 1992, Three Boys Music Corporation filed a copyright infringement action for damages against the appellants under 17 U.S.C. §§ 101 et

seq. (1988). The parties agreed to a trifurcated trial. On April 25, 1994, in the first phase, the jury determined that the appellants had infringed the Isley Brothers' copyright. At the end of second phase five days later, the jury decided that Bolton's "Love Is a Wonderful Thing" accounted for 28 percent of the profits from "Time, Love and Tenderness." The jury also found that 66 percent of the profits from commercial uses of the song could be attributed to the inclusion of infringing elements. On May 9, 1994, the district court entered [\*\*5] judgment in favor of the Isley Brothers based on the first two phases.

The deadline for post-trial motions was May 25, 1994. On that day, the appellants filed a motion for judgment as a matter of law and a motion for new trial. The district court denied the motions on August 11, 1994. On June 8, 1994, the appellants filed a second motion for new trial based on newly discovered evidence on the issue of copyright ownership. The district court dismissed this motion as untimely.

On December 5, 1996, the district court adopted the findings of the Special Master's Amended Report about the allocation of damages (third phase). In the final judgment entered against the appellants, the district court ordered Sony Music to pay \$ 4,218,838; Bolton to pay \$ 932,924; Goldmark to pay \$ 220,785; and their music publishing companies to pay \$ 75,900. They timely appealed.

## II. DISCUSSION

Proof of copyright infringement is often highly circumstantial, particularly in cases involving music. A copyright plaintiff must prove (1) ownership of the copyright; and (2) infringement - that the defendant copied protected elements of the plaintiff's work. *See Smith v. Jackson*, 84 F.3d 1213, 1218 (9th Cir. 1996) [\*\*6] (citation omitted). Absent direct evidence of copying, proof of infringement involves fact-based showings that the defendant had "access" to the plaintiff's work and that the two works are "substantially similar." *Id.*

Given the difficulty of proving access and substantial similarity, appellate courts have been reluctant to reverse jury verdicts in music cases. *See, e.g., id. at 1221* (affirming a jury's verdict for the defendants in a copyright infringement case involving Michael Jackson and other musicians); *Gaste v. Kaiserman*, 863 F.2d 1061, 1071 (2d Cir. 1988) (affirming a jury's damages



award against a defendant in a music copyright infringement case). Judge Newman's opinion in *Gaste* nicely articulated the proper role for an appeals court in reviewing a jury verdict:

The guiding principle in deciding whether to overturn a jury verdict for insufficiency of the evidence is whether the evidence is such that, without weighing the credibility of the witnesses or otherwise considering the weight of the evidence, there can be but one conclusion as to the verdict that reasonable men could have reached.

*Id.* at 1066 [\*\*7] (internal quotations omitted). In *Arnstein v. Porter*, the seminal case [482] about musical copyright infringement, Judge Jerome Frank wrote:

Each of these two issues - copying and improper appropriation - is an issue of fact. If there is a trial, the conclusions on those issues of the trier of the facts - of the judge if he sat without a jury, or of the jury if there was a jury trial - bind this court on appeal, provided the evidence supports those findings, regardless of whether we would ourselves have reached the same conclusions.

*Arnstein v. Porter*, 154 F.2d 464, 469 (2d Cir. 1946).

As a general matter, the standard for reviewing jury verdicts is whether they are supported by "substantial evidence" - that is, such relevant evidence as reasonable minds might accept as adequate to support a conclusion. See *Poppell v. City of San Diego*, 149 F.3d 951, 962 (9th Cir. 1998). The credibility of witnesses is an issue for the jury and is generally not subject to appellate review. See *Gilbrook v. City of Westminster*, 177 F.3d 839, 856 (9th Cir.), cert. denied, 120 S. Ct. 614 (1999).

We affirm the jury's verdict [\*\*8] in this case in light of the standard of review and copyright law's "guiding principles." Although we will address each of the appellant's arguments in turn, we focus on access because it is the most difficult issue in this case. Our

decision is predicated on judicial deference - finding that the law has been properly applied in this case, viewing the facts most favorably to the appellees, and not substituting our judgment for that of the jury.

#### A. Access

Proof of access requires "an opportunity to view or to copy plaintiff's work." *Sid and Marty Krofft Television Prods., Inc. v. McDonald's Corp.*, 562 F.2d 1157, 1172 (9th Cir. 1977). This is often described as providing a "reasonable opportunity" or "reasonable possibility" of viewing the plaintiff's work. 4 Melville B. Nimmer & David Nimmer, *Nimmer on Copyright*, § 13.02[A], at 13-19 (1999); *Jason v. Fonda*, 526 F. Supp. 774, 775 (C.D. Cal. 1981), aff'd, 698 F.2d 966 (9th Cir. 1983). We have defined reasonable access as "more than a 'bare possibility.'" *Jason*, 698 F.2d at 967. Nimmer has elaborated on our definition: "Of course, reasonable opportunity as [\*\*9] here used, does not encompass any bare possibility in the sense that anything is possible. Access may not be inferred through mere speculation or conjecture. There must be a reasonable possibility of viewing the plaintiff's work - not a bare possibility." 4 *Nimmer*, § 13.02[A], at 13-19. "At times, distinguishing a 'bare' possibility from a 'reasonable' possibility will present a close question." *Id.* at 13-20.

Circumstantial evidence of reasonable access is proven in one of two ways: (1) a particular chain of events is established between the plaintiff's work and the defendant's access to that work (such as through dealings with a publisher or record company), or (2) the plaintiff's work has been widely disseminated. See 4 *Nimmer*, § 13.02[A], at 13-20-13-21; 2 Paul Goldstein, *Copyright: Principles, Law, and Practice* § 8.3.1.1., at 90-91 (1989). Goldstein remarks that in music cases the "typically more successful route to proving access requires the plaintiff to show that its work was widely disseminated through sales of sheet music, records, and radio performances." 2 Goldstein, § 8.3.1.1, at 91. Nimmer, however, cautioned that "concrete cases will pose difficult [\*\*10] judgments as to where along the access spectrum a given exploitation falls." 4 *Nimmer*, § 13.02[A], at 13-22.

Proof of widespread dissemination is sometimes accompanied by a theory that copyright infringement of a popular song was subconscious. Subconscious copying has been accepted since Learned Hand embraced it in a 1924 music infringement case: "Everything registers somewhere in our memories, and no one can tell what



[\*483] may evoke it . . . . Once it appears that another has in fact used the copyright as the source of this production, he has invaded the author's rights. It is no excuse that in so doing his memory has played him a trick." *Fred Fisher, Inc. v. Dillingham*, 298 F. 145, 147-48 (S.D.N.Y. 1924). In *Fred Fisher*, Judge Hand found that the similarities between the songs "amounted to identity" and that the infringement had occurred "probably unconsciously, what he had certainly often heard only a short time before." *Id.* at 147.

In modern cases, however, the theory of subconscious copying has been applied to songs that are more remote in time. *ABKCO Music, Inc. v. Harrisongs Music, Ltd.*, 722 F.2d 988 (2d Cir. 1983) is the [\*\*11] most prominent example. In *ABKCO*, the Second Circuit affirmed a jury's verdict that former Beatle George Harrison, in writing the song "My Sweet Lord," subconsciously copied The Chiffons' "He's So Fine," which was released six years earlier. *See id.* at 997, 999. Harrison admitted hearing "He's So Fine" in 1963, when it was number one on the Billboard charts in the United States for five weeks and one of the top 30 hits in England for seven weeks. *See id.* at 998. The court found: "the evidence, standing alone, 'by no means compels the conclusion that there was access . . . it does not compel the conclusion that there was not.'" *Id.* (quoting *Heim v. Universal Pictures Co.*, 154 F.2d 480, 487 (2d Cir. 1946)). In *ABKCO*, however, the court found that "the similarity was so striking and where access was found, the remoteness of that access provides no basis for reversal." *Id.* Furthermore, "the mere lapse of a considerable period of time between the moment of access and the creation of defendant's work does not preclude a finding of copying." 4 *Nimmer*, § 13.02[A], at 13-20 (citing *ABKCO*, 722 F.2d at 997-98). [\*\*12]

The Isley Brothers' access argument was based on a theory of widespread dissemination and subconscious copying. They presented evidence supporting four principal ways that Bolton and Goldmark could have had access to the Isley Brothers' "Love is a Wonderful Thing":

(1) Bolton grew up listening to groups such as the Isley Brothers and singing their songs. In 1966, Bolton and Goldmark were 13 and 15, respectively, growing up in Connecticut. Bolton testified that he had been listening to rhythm and blues music by black singers since he was 10 or 11, "appreciated a lot of Black singers," and as a

youth was the lead singer in a band that performed "covers" of popular songs by black singers. Bolton also testified that his brother had a "pretty good record collection."

(2) Three disk jockeys testified that the Isley Brothers' song was widely disseminated on radio and television stations where Bolton and Goldmark grew up. First, Jerry Blavitt testified that the Isley Brothers' "Love is a Wonderful Thing" was played five or six times during a 13-week period on the television show, "The Discophonic Scene," which he said aired in Philadelphia, New York, and Hartford-New Haven. Blavitt also [\*\*13] testified that he played the song two to three times a week as a disk jockey in Philadelphia and that the station is still playing the song today. Second, Earl Rodney Jones testified that he played the song a minimum of four times a day during an eight to 14 to 24 week period on WVON radio in Chicago, and that the station is still playing the song today. Finally, Jerry Bledsoe testified that he played the song on WUFO radio in Buffalo, and WWRL radio in New York was playing the song in New York in 1967 when he went there. Bledsoe also testified that he played the song twice on a television show, "Soul," which aired in New York and probably in New Haven, Connecticut, where Bolton lived.

(3) Bolton confessed to being a huge fan of the Isley Brothers and a collector of their music. Ronald Isley testified that when Bolton saw Isley at the Lou Rawls United Negro College Fund Benefit concert in 1988, Bolton said, "I know this guy. [\*484] I go back with him. I have all his stuff." Angela Winbush, Isley's wife, testified about that meeting that Bolton said, "This man needs no introduction. I know everything he's done."

(4) Bolton wondered if he and Goldmark were copying a song by another famous [\*\*14] soul singer. Bolton produced a work tape attempting to show that he and Goldmark independently created their version of "Love Is a Wonderful Thing." On that tape of their recording session, Bolton asked Goldmark if the song they were composing was Marvin Gaye's "Some Kind of Wonderful." <sup>1</sup> The district court, in affirming the jury's verdict, wrote about Bolton's Marvin Gaye remark:

This statement suggests that Bolton was contemplating the possibility that the work he and Goldmark were creating, or at least a portion of it, belonged to someone else,



but that Bolton wasn't sure who it belonged to. A reasonable jury can infer that Bolton mistakenly attributed the work to Marvin Gaye, when in reality Bolton was subconsciously drawing on Plaintiff's song.

1 Gaye recorded "Some Kind of Wonderful" after it had been made famous by The Drifters. See Marvin Gaye, *Some Kind of Wonderful*, on *In the Groove* (Motown 1968). Marvin Gaye also referred to the song's chorus, "She's some kind of wonderful," in his song, "Too Busy Thinking About My Baby." See Marvin Gaye, *Too Busy Thinking About My Baby*, on *MPG*, (Motown 1969).

[\*\*15] The appellants contend that the Isley Brothers' theory of access amounts to a "twenty-five-years-after-the-fact-subconscious copying claim." Indeed, this is a more attenuated case of reasonable access and subconscious copying than *ABKCO*. In this case, the appellants never admitted hearing the Isley Brothers' "Love is a Wonderful Thing." That song never topped the Billboard charts or even made the top 100 for a single week. The song was not released on an album or compact disc until 1991, a year after Bolton and Goldmark wrote their song. Nor did the Isley Brothers ever claim that Bolton's and Goldmark's song is so "strikingly similar" to the Isley Brothers' that proof of access is presumed and need not be proven.

Despite the weaknesses of the Isley Brothers' theory of reasonable access, the appellants had a full opportunity to present their case to the jury. Three rhythm and blues experts (including legendary Motown songwriter Lamont Dozier of Holland-Dozier-Holland fame) testified that they never heard of the Isley Brothers' "Love is a Wonderful Thing." Furthermore, Bolton produced copies of "TV Guide" from 1966 suggesting that the television shows playing the song never aired [\*\*16] in Connecticut. Bolton also pointed out that 129 songs called "Love is a Wonderful Thing" are registered with the Copyright Office, 85 of them before 1964.

The Isley Brothers' reasonable access arguments are not without merit. Teenagers are generally avid music listeners. It is entirely plausible that two Connecticut teenagers obsessed with rhythm and blues music could

remember an Isley Brothers' song that was played on the radio and television for a few weeks, and subconsciously copy it twenty years later. Furthermore, Ronald Isley testified that when they met, Bolton said, "I have all his stuff." Finally, as the district court pointed out, Bolton's remark about Marvin Gaye and "Some Kind of Wonderful" indicates that Bolton believed he may have been copying someone else's song.

Finally, with regard to access, we are mindful of Judge Frank's words of caution in *Arnstein v. Porter*: "The judge characterized plaintiff's story as 'fantastic'; and in the light of the references in his opinion to defendant's deposition, the judge obviously accepted the defendant's denial of access and copying . . . . Yet plaintiff's credibility, even as to those improbabilities, should be left to the [\*\*17] jury." *Arnstein*, 154 F.2d at 469. In this case, Judge Baird heeded Judge Frank's admonition:

This Court is not in a position to find that the only conclusion that a reasonable jury could have reached is that [\*\*485] Defendants did not have access to Plaintiff's song. One must remember that the issue this Court must address is not whether Plaintiff has proven access by a preponderance of evidence, but whether *reasonable minds* could find that Defendants had a *reasonable opportunity* to have heard Plaintiff's song before they created their own song.

Although we might not reach the same conclusion as the jury regarding access, we find that the jury's conclusion about access is supported by substantial evidence. We are not establishing a new standard for access in copyright cases; we are merely saying that we will not disturb the jury's factual and credibility determinations on this issue.

#### B. Substantial Similarity

Under our case law, substantial similarity is inextricably linked to the issue of access. In what is known as the "inverse ratio rule," we "require a lower standard of proof of substantial similarity when a high degree of access is shown. [\*\*18] " *Smith*, 84 F.3d at 1218 (citing *Shaw v. Lindheim*, 919 F.2d 1353, 1361-62 (9th Cir. 1990); *Krofft*, 562 F.2d at 1172). Furthermore, in the absence of any proof of access, a copyright



plaintiff can still make out a case of infringement by showing that the songs were "strikingly similar." See *Smith*, 84 F.3d at 1220; *Baxter v. MCA, Inc.*, 812 F.2d 421, 423, 424 n.2 (9th Cir. 1987).

Proof of the substantial similarity is satisfied by a two-part test of extrinsic similarity and intrinsic similarity. See *Krofft*, 562 F.2d at 1164. Initially, the extrinsic test requires that the plaintiff identify concrete elements based on objective criteria. See *Smith*, 84 F.3d at 1218; *Shaw*, 919 F.2d at 1356. The extrinsic test often requires analytical dissection of a work and expert testimony. See *Apple Computer, Inc. v. Microsoft Corp.*, 35 F.3d 1435, 1442 (9th Cir. 1994). Once the extrinsic test is satisfied, the factfinder applies the intrinsic test. The intrinsic test is subjective and asks "whether the ordinary, reasonable person would find the total [\*\*19] concept and feel of the works to be substantially similar." *Pasillas v. McDonald's Corp.*, 927 F.2d 440, 442 (9th Cir. 1991) (internal quotations omitted).

We will not second-guess the jury's application of the intrinsic test. See *Krofft* 562 F.2d at 1166 ("Since the intrinsic test for expression is uniquely suited for determination by the trier of fact, this court must be reluctant to reverse it.") (citations omitted). Furthermore, we will not reverse factual determinations regarding the extrinsic test absent a clearly erroneous application of the law. See *id.* It is well settled that a jury may find a combination of unprotectible elements to be protectible under the extrinsic test because "the over-all impact and effect indicate substantial appropriation." *Id.* at 1169 (quoting *Malkin v. Dubinsky*, 146 F. Supp. 111, 114 (S.D.N.Y. 1956)).

### 1. Evidence of Substantial Similarity

Bolton and Goldmark argue that there was insufficient evidence of substantial similarity because the Isley Brothers' expert musicologist, Dr. Gerald Eskelin, failed to show that there was copying of a combination of unprotectible [\*\*20] elements. On the contrary, Eskelin testified that the two songs shared a combination of five unprotectible elements: (1) the title hook phrase (including the lyric, rhythm, and pitch); (2) the shifted cadence; (3) the instrumental figures; (4) the verse/chorus relationship; and (5) the fade ending. Although the appellants presented testimony from their own expert musicologist, Anthony Ricigliano, he conceded that there were similarities between the two songs and that he had not found the combination of unprotectible elements in

the Isley Brothers' song "anywhere in the prior art." The jury heard testimony from both of these experts and "found infringement based on a unique compilation of those elements." We refuse to interfere with the jury's credibility determination, nor do we find [\*486] that the jury's finding of substantial similarity was clearly erroneous.

### 2. Independent Creation

Bolton and Goldmark also contend that their witnesses rebutted the Isley Brothers' prima facie case of copyright infringement with evidence of independent creation. By establishing reasonable access and substantial similarity, a copyright plaintiff creates a presumption of copying. The burden shifts to [\*\*21] the defendant to rebut that presumption through proof of independent creation. See *Granite Music Corp. v. United Artists Corp.*, 532 F.2d 718, 721 (9th Cir. 1976).

The appellants' case of independent creation hinges on three factors: the work tape demonstrating how Bolton and Goldmark created their song, Bolton and Goldmark's history of songwriting, and testimony that their arranger, Walter Afanasieff, contributed two of five unprotectible elements that they allegedly copied. The jury, however, heard the testimony of Bolton, Goldmark, Afanasieff, and Ricigliano about independent creation. The work tape revealed evidence that Bolton may have subconsciously copied a song that he believed to be written by Marvin Gaye. Bolton and Goldmark's history of songwriting presents no direct evidence about this case. And Afanasieff's contributions to Bolton and Goldmark's song were described by the appellants' own expert as "very common." Once again, we refuse to disturb the jury's determination about independent creation. The substantial evidence of copying based on access and substantial similarity was such that a reasonable juror could reject this defense.

### 3. Inverse-Ratio [\*\*22] Rule

Although this may be a weak case of access and a circumstantial case of substantial similarity, neither issue warrants reversal of the jury's verdict. An amicus brief on behalf of the recording and motion picture industries warns against watering down the requirements for musical copyright infringement. This case presents no such danger. The Ninth Circuit's inverse-ratio rule requires a lesser showing of substantial similarity if there is a strong showing of access. See *Smith*, 84 F.3d at 1218.



In this case, there was a weak showing of access. We have never held, however, that the inverse ratio rule says a weak showing of access requires a stronger showing of substantial similarity. Nor are we redefining the test of substantial similarity here; we merely find that there was substantial evidence from which the jury could find access and substantial similarity in this case.

#### C. Sufficiency of the Deposit Copy

The appellants argue that the district court did not have jurisdiction over this case because the Isley Brothers failed to register a complete copy of the song upon which the lawsuit was based. Although the 1909 Copyright Act requires the owner to deposit [\*\*23] a "complete copy" of the work with the copyright office, our definition of a "complete copy" is broad and deferential: "Absent intent to defraud and prejudice, inaccuracies in copyright registrations do not bar actions for infringement." *Harris v. Emus Records Corp.*, 734 F.2d 1329, 1335 (9th Cir. 1984) (citations omitted).

Bolton and Goldmark argue that in 1964 the Isley Brothers deposited sheet music ("deposit copy") of "Love is a Wonderful Thing" that differed from the recorded version of the song. Furthermore, they claimed that the deposit copy does not include the majority of the musical elements that were part of the infringement claim. At trial, the Isley Brothers' expert, Dr. Eskelin, testified that the deposit copy included all of the song's essential elements such as the title hook, chorus, and pitches. Dr. Eskelin even played the deposit copy for the jury on the keyboard. We refuse to disturb the jury's finding that the Isley Brothers deposited a "complete copy" because (1) there was no intent to defraud and prejudice and (2) any inaccuracies [\*487] in the deposit copy were minor and do not bar the infringement action.

#### D. Attribution of Profits

Sony Music [\*\*24] claims that the district court improperly applied an assumption that all profits from Bolton and Goldmark's song go to the Isley Brothers, and that no evidence supported the jury's apportionment of profits. A successful copyright plaintiff is allowed to recover only those profits that are "attributable to infringement." 17 U.S.C. § 504(b) (1994). "In establishing the infringer's profits, the copyright owner is required to present proof only of the infringer's gross revenue, and the infringer is required to prove his or her deductible expenses and the elements of profit

attributable to factors other than the copyrighted work." *Id.* See also *Cream Records, Inc. v. Jos. Schlitz Brewing Co.*, 754 F.2d 826, 828 (9th Cir. 1985) (holding that when all profits do not clearly derive from the infringing material, the copyright owner is not entitled to recover all of the profits); *Gaste*, 863 F.2d at 1070 (finding that where there is "imprecision in the computation of expenses, a court should err on the side of guaranteeing the plaintiff a full recovery"). Thus, the statutory burden of proof lies with Sony Music to prove what percentage of [\*\*25] their profits were not attributable to copying the Isley Brothers' "Love is a Wonderful Thing."

Sony Music presented evidence that Bolton's "Love Is a Wonderful Thing" produced only 5-10% of the profits from his album, "Time, Love and Tenderness," and that the song's infringing elements resulted in only 10-15% of the profits from the song. The Isley Brothers, however, attacked the credibility of one of Sony Music's experts. Furthermore, they presented evidence that Bolton's infringing song was the album's lead single, that it was released 19 days before the album, and that Bolton engaged in telephone promotion of the song. The jury found that 28% of the album's profits derived from the song, and that 66% of the song's profits resulted from infringing elements.

We affirm the jury's apportionment of the profits for several reasons. First, the jury instructions adequately conveyed the burden of proof. Second, the burden of proof was on Sony Music, and the jury chose not to believe Sony Music's experts. Finally, a jury verdict apportioning less than 100% of the profits but more than the percentage estimates of Sony Music's experts does not represent clear error.

#### E. Deduction of Tax [\*\*26] Liability

Sony Music also argues that the district court erred in allowing Bolton and Goldmark, but not Sony Music, to deduct income taxes due to profits from the album. Whether income taxes are considered "deductible expenses" under § 504(b) is an issue of first impression in this circuit. The Supreme Court held that willful infringers could not deduct income taxes, but it left open the possibility that non-willful infringers could deduct their income taxes from the infringing profits. See *L.P. Larson, Jr., Co. v. Wm. Wrigley, Jr., Co.*, 277 U.S. 97, 99-100, 72 L. Ed. 800, 48 S. Ct. 449 (1928). The circuits are split over whether non-willful infringers such as Bolton, Goldmark, and Sony Music can deduct income



taxes from their infringing profits. *Compare In Design v. K-Mart Apparel Corp.*, 13 F.3d 559, 567 (2d Cir. 1994) (allowing the deduction of income taxes) with *Schnadig Corp. v. Gaines Mfg. Co., Inc.*, 620 F.2d 1166, 1169-70 (6th Cir. 1980) (not allowing the deduction of income taxes).

The Second Circuit allowed the deduction of income taxes because if infringers are liable for pre-tax profits, they may end up paying more money [\*\*27] than they ever received. See *In Design*, 13 F.3d at 567. Under the Second Circuit's rule, the infringer receives a windfall by (1) paying a smaller damages award and (2) deducting the entire, pre-tax award from gross income on a subsequent tax return. The Sixth Circuit rejected the deduction of income taxes because the increased pre-tax [\*488] profits paid to the copyright holder will be balanced out by an eventual tax refund based on the pre-tax award. See *Schnadig*, 620 F.2d at 1169-70. Under the Sixth Circuit's rule, the copyright holder receives a windfall by receiving a larger, pre-tax award.

During the third phase of this trial, the district court adopted the findings of the special master's report regarding the deduction of income taxes. The district court followed the Second Circuit rule and allowed Bolton and Goldmark, as non-willful infringers, to deduct the income taxes and management fees that they paid relating to the infringing song. The district court, however, refused to allow Sony Music to deduct its Net Operating Loss Carry-forward (NOL) because the NOL did not have a "concrete financial impact."

We uphold the district court's decision to [\*\*28] allow non-willful infringers to deduct income taxes, but not NOL. In this case, Bolton and Goldmark actually paid income taxes and management fees on the infringing profits. Sony Music, however, never actually paid income taxes on its infringing profits. Rather, Sony Music claimed it offset nearly \$ 1.7 million in taxes on the infringing profits against its parent company's NOL. No court has ever found that NOL is a deductible expense under § 504(b). Furthermore, we find that the district court's distinctions between taxes actually paid and taxes not actually paid was a fair one. Thus, we affirm the district court's calculation of a \$ 4,218,838 damages award against Sony Music.

#### F. Second New Trial Motion

Finally, Bolton and Goldmark claim that the district

court erred in rejecting their second motion for new trial. The district court's denial of a motion for a new trial pursuant to *Federal Rule of Civil Procedure 60(b)* is reviewed for an abuse of discretion. See *Browning-Ferris Indus. v. Kelco Disposal, Inc.*, 492 U.S. 257, 278, 106 L. Ed. 2d 219, 109 S. Ct. 2909 (1989); *Scott v. Ross*, 140 F.3d 1275, 1281 (9th Cir. 1998). The abuse of discretion [\*\*29] standard applies particularly when the district court's denial is based on the motion's untimeliness. See *E. & J. Gallo Winery v. Gallo Cattle Co.*, 967 F.2d 1280, 1294-96 (9th Cir. 1992).

Bolton and Goldmark's second motion for a new trial was based on the discovery of new evidence that disputed the Isley Brothers' claim of authorship. A day before the deadline for post-trial motions, the appellees discovered evidence alleging that the Turkcords, a group that played with the Isley Brothers in the mid-1960s, claimed to have written the 1964 song, "Love is a Wonderful Thing." Bolton and Goldmark did not immediately notify the district court of this new evidence. Instead, fourteen days after the deadline for post-trial motions had passed, they filed an additional motion for new trial. The district court rejected the second motion for new trial as untimely filed.

We affirm the district court's denial of the second motion for new trial because the evidence, if true, goes at most to the weight and credibility of the evidence before the jury. At trial, Ronald Isley claimed to have written the song with the deceased guitar legend, Jimi Hendrix. (As a young man, Hendrix played [\*\*30] in the Isley Brothers' band.) The Turkcords' claims of authorship are dubious for several reasons. The Turkcords knew about the re-release of "Love is a Wonderful Thing" by United Artists in 1991, yet they claimed that the Isley Brothers had agreed to share the song's royalties with them only after hearing about the damages award in this case on "Inside Edition." Furthermore, Bolton and Goldmark knew about this new evidence before the deadline for the post-trial motions, yet they did not immediately notify the district court.

Even if the Turkcords' claims of authorship are true, a new trial is not warranted in the interests of justice because the Isley Brothers' copyright ownership is not jeopardized. Registration is [\*489] prima facie evidence of the validity of a copyright. See 17 U.S.C. § 410(c) (1994). This presumption can be rebutted by the defendant's showing that the plaintiff's work is not original. See *North Coast Indus. v. Jason Maxwell, Inc.*,



972 F.2d 1031, 1033 (9th Cir. 1992). *North Coast's* definition of originality is broad: "All that is needed to satisfy both the Constitution and the statute is that the "author" contributed [\*\*31] something more than a "merely trivial" variation, something recognizably "his own." Originality in this context means "little more than a prohibition of actual copying." " *Id.* (quoting *Krofft*, 562 F.2d at 1163 n.5 (quoting *Alfred Bell & Co. v. Catalda Fine Arts*, 191 F.2d 99, 102-03 (2d Cir. 1951))). See also *Kamar Int'l Inc. v. Russ Berrie and Co.*, 657 F.2d 1059, 1061 (9th Cir. 1981) (employing a broad definition of originality relating to toy stuffed animals).

In this case, the Isley Brothers undoubtedly contributed something original to "Love is a Wonderful Thing." Their proteges, the Turkcords, purportedly wrote the song, then gave the Isley Brothers' permission to record it after the voice of the Turkcords' lead singer allegedly "cracked." Members of the Turkcords allegedly sang back-up on the record. Yet the Turkcords never

copyrighted their song. They relied on the Isley Brothers' alleged promise to share the royalties with them.

The district court did not abuse its discretion in rejecting Bolton and Goldmark's second motion for a new trial based on this evidence. The Turkcords' claims of authorship would not have affected [\*\*32] the outcome of the case and at most go to the weight and credibility of the evidence. Bolton and Goldmark's second motion was a last-ditch attempt to discredit the jury's verdict. The district court heard all of the evidence in this case, instructed the jury on the applicable law, yet refused to reverse the jury's verdict pursuant to motion for a judgment as a matter of law. Having found that the law was properly applied in this case, we leave the district court's decisions and the jury's credibility determinations undisturbed.

AFFIRMED.

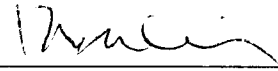


**CERTIFICATE OF MAILING**

Date of Deposit: September 15, 2009

"Express Mail" mailing label number: EB 519288517 US

I hereby certify that this paper or fee, **NOTICE OF RELIANCE RE: OFFICIAL RECORDS**, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" on the date indicated above and is addressed to: UNITED STATES PATENT AND TRADEMARK OFFICE, Trademark Trial and Appeal Board , P.O. Box 1451, Alexandria, Virginia 22313-1451.

  
\_\_\_\_\_  
Alexa L. Lewis



### PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

On September 15, 2009, I served a copy of the foregoing document(s) described as **NOTICE OF RELIANCE RE: OFFICIAL RECORDS** on the interested parties in this action at their last known address as set forth below by taking the action described below:

Lawrence Y. Iser ( <a href="mailto:liser@kwikalaw.com">liser@kwikalaw.com</a> ) Direct (310) 566-9801 Direct Fax (310) 566-9861 Patricia A. Millett ( <a href="mailto:pmillet@kwikalaw.com">pmillet@kwikalaw.com</a> ) Direct (310) 566-9821 Direct Fax (310) 566-9870 Chad R. Fitzgerald ( <a href="mailto:CFitzgerald@kwikalaw.com">CFitzgerald@kwikalaw.com</a> ) Direct 310.566.9802 Direct Fax 310.566.9882 Kinsella, Weitzman, Iser, Kump & Aldisert LLP 808 Wilshire Boulevard, 3rd Floor Santa Monica, CA 90401 (310) 566-9800 Fax: (310) 566-9850	Counsel for Applicant, MATTEL, INC.
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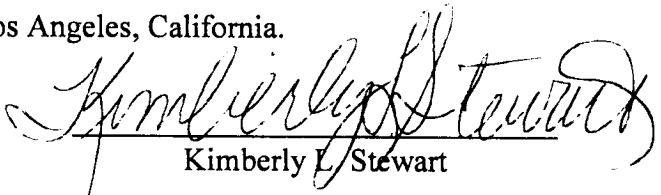
- ☒ **BY MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) addressed as set forth above, and deposited each envelope in the mail at Los Angeles, California. Each envelope was mailed with postage thereon fully prepaid.
- ☐ **BY OVERNIGHT MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) designated by the carrier, with delivery fees provided for, and addressed as set forth above, and deposited the above-described document(s) with \_\_\_\_\_ in the ordinary course of business, by depositing the document(s) in a facility regularly maintained by the carrier or delivering the document(s) to an authorized driver for the carrier.
- ☐ **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed envelope(s), and caused personal delivery by \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth above.
- ☐ **BY ELECTRONIC MAIL:** I served the above-mentioned document electronically at \_\_\_\_:\_\_\_\_.m. on the parties listed at the email addresses above and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.



☐ **BY FAX:** On \_\_\_\_\_, at \_\_\_\_\_ am/pm, from facsimile number (310) \_\_\_\_\_, before placing the above-described document(s) in sealed envelope(s) addressed as set forth above, I sent a copy of the above-described document(s) to each of the individuals set forth above at the facsimile numbers listed above. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of that report is attached hereto.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on September 15, 2009, at Los Angeles, California.

  
Kimberly L. Stewart



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/751,105  
Published for Opposition in the OFFICIAL GAZETTE on December 12, 2006

\_\_\_\_\_  
UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.,

Applicant  
\_\_\_\_\_

**NOTICE OF RELIANCE RE: PRINTED PUBLICATIONS**



Pursuant to 37 C.F.R. §2.122(e), Opposer UMG Recordings, Inc. hereby makes of record and notifies Applicant of its reliance on the following printed publications, which are capable of ready determination by resort to sources whose accuracy cannot reasonably be questioned, and are offered to rebut Applicant's evidence by showing the history and fame of the MOTOWN mark, the public's association of the MOTOWN mark with Opposer and its predecessors, and the creation of the MOTOWN mark. True and correct copies of are attached hereto as Exhibit A, and Opposer asks the Board to take judicial notice thereof:

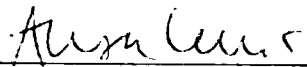
- (1) An except of Gordy Berry, To Be Loved: The Music, The Magic, The Memories of Motown, published by Warner Books in October 1994.
- (2) "Motown Turns 50, but the Party's Far From Over," which appeared in the New York Times on September 5, 2009.
- (3) "Motown Veteran Celebrates Company's 40th Anniversary," which appeared in The Philadelphia Tribune on June 12, 1998.
- (4) Entry for "Motown," The World Book Dictionary, published by World Book, Inc. in 2003.



(5) "BERRY GORDY JR.(helped the social landscape of Detroit)," which appeared in Crain's Detroit Business on November 1, 1999.

Respectfully submitted,

Date: September 15, 2009

  
\_\_\_\_\_  
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**UMG RECORDINGS, INC. v. MATTEL, INC.  
OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT A  
TO NOTICE OF RELIANCE RE: PRINTED  
PUBLICATIONS FILED SEPTEMBER 15, 2009**



# BERRY GORDY TO BE LOVED

THE MUSIC, THE MAGIC,  
THE MEMORIES OF MOTOWN

AN AUTOBIOGRAPHY



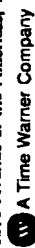
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Warner Books, Inc., 1271 Avenue of the Americas, New York, NY 10020



Printed in the United States of America  
First Printing: October 1994  
10 9 8 7 6 5 4 3 2 1

Library of Congress Cataloging-in-Publication Data

Gordy, Berry.

To be loved : the music, the magic, the memories of Motown : an autobiography / Berry Gordy.

p. cm.

ISBN 0-446-51523-X

1. Gordy, Berry. 2. Sound recording executives and producers—United States—Biography. 3. Motown Record Corporation.

I. Title.

ML429.G67A3 1994

781.644'092—dc20

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94-29067  
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Book design by Giorgetta Bell McRee

to my sisters Gwen and Anna,  
who think they own me—  
and they do



us record there in the middle of the night, when nobody else was using the studio. That gave me a chance to cut several songs at a lesser rate.

The record came out so great I decided to use it to launch another label. The Tamla name was commercial enough but had been more of a gimmick. Now I wanted something that meant more to me, something that would capture the feeling of my roots—my hometown.

Because of its thriving car industry, Detroit had long been known as the "Motor City." In tribute to what I had always felt was the down-home quality of warm, soulful country-hearted people I grew up around, I used "town" in place of "city." A contraction of "Motor Town" gave me the perfect name—Motown. I would later use that name to incorporate my company.

Now I had two labels. My original plan was to put out all the solo artists on the Tamla label and the groups on the new Motown label. Each label would have its own image and identity—solo artists versus groups. But this plan, like some others, turned out not to be practical.

After making test pressings of "Bad Girl," I found—once again—I could not afford to put it out myself. Too much money had gone into cutting songs and making the masters. My second attempt at going national had failed.

I took what little cash I had, bought a plane ticket, grabbed my best masters, and headed off to New York on what turned out to be a very fateful trip.

My sister Anna, always supportive, had driven me to the airport, but just as I was walking up the steps to board the plane, I heard my name. Turning around I saw her frantically running toward me, waving a newspaper.

"Wait a minute," she yelled, "don't get on that plane! Today and next Monday, bad days for Sagittarians to travel."

*She's got to be kidding.*

Here I am, about to go on possibly the most important trip of my life and she has to come to me with something like this. *But what if she's right?*

I knew if I didn't go I would be dead anyway. So I smiled and waved her good-bye.

That flight was probably not much rougher than any other but every bump had me in constant panic, much more than usual. When we finally landed I was a wreck and decided that day that touching down in that airplane was the second best feeling I'd ever had.

My first stop in New York, naturally, was to be United Artists. Walking down Seventh Avenue near the UA building, I ran into some people from Detroit. I didn't even know them that well, but being alone in a strange town made anyone from home your instant friend. Before I knew it, I had invited them up to the company with me.

"Listen," I said, knowing how impressed they would be, "the executives at UA would be real hurt if they found out I was in town and hadn't given them first crack at my hot new product."

Most people in Detroit had heard that no matter how big you are, you hadn't really made it until you were big in New York. Well, I was big, and I couldn't wait to see their faces when they saw how big.

Once upstairs in the UA outer offices, however, there was no buzzing me in, no "Mr. Gordy this, Mr. Gordy that."

*This must be a new receptionist who doesn't know who I am.* Motioning for the others to have a seat in the lobby, I moved to her quickly. "I'm Berry Gordy, the producer for Marv Johnson."

No reaction.

"I produced 'Come To Me' and I'm—"

Before I could say anything more, I heard this nasal voice coming at me with "Could you spell that last name please?"

The knot in my stomach told me I was in trouble. "Gordy, G-O-R-D-Y," I said, glancing back at my friends sitting on the couch trying hard to act oblivious. I leaned forward to the young lady and whispered, "You're gonna be in real trouble if you don't call the Sales Department right now and let them know I'm here."

We locked eyes for a moment or so before she decided to make the call. While talking to someone, I saw her expression go from fear and concern to confidence and arrogance as she put the phone down. "I'm sorry, sir, they're all busy now. You'll just have to be patient. Why don't you have a seat, Mr. Gorney?"



**The New York Times**PRINTER FRIENDLY FORMAT  
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September 5, 2009

## Motown Turns 50, but the Party's Far From Over

By THE ASSOCIATED PRESS

Filed at 12:04 a.m. ET

DETROIT (AP) -- On Jan. 12, 1959, Elvis Presley was in the Army. The Beatles were a little-known group called The Quarrymen casting about for gigs in Liverpool. The nascent rock 'n' roll world was a few weeks away from "the day the music died" -- when a single-engine plane crash claimed the lives of Buddy Holly, J.P. "The Big Bopper" Richardson and Ritchie Valens.

It's also the day a 29-year-old boxer, assembly line worker and songwriter named Berry Gordy Jr. used an \$800 family loan to start a record company in Detroit.

Fifty years later, Motown Records Corp. and its stable of largely African-American artists have become synonymous with the musical, social and cultural fabric of America. The company spawned household names, signature grooves and anthems for the boulevard and bedroom alike that transcended geography and race.

And time.

Motown may be 50 years old, but it isn't any less relevant with current hitmakers -- from Taylor Swift to Coldplay -- citing the label's signature "sound" as an influence.

Would there be a Beyonce or Mariah Carey had Diana Ross, Martha Reeves and Gladys Knight not come first?

How about Kanye West and Justin Timberlake? What would have become of their musical careers had Motown not blazed a trail with the likes of Michael Jackson, Smokey Robinson, Marvin Gaye, Stevie Wonder, The Temptations and The Four Tops?

"There were just so many amazing artists that came through. It was such a surge," said singer-songwriter Jewel, whose recently released collection of original lullabies includes Motown influences. "And it really informed The Beatles' melodies. So much of what pop music and popular culture became. I recommend everybody go back and look at those melodies and see where they find them today, because they're resurfacing and being remixed, basically, into new pop songs."

**Exhibit A**  
**Page 7**



From its founding in 1959 to a much-debated move to Los Angeles 13 years later, what has become known as "classic Motown" created a once-in-a-lifetime sound that was local and global, black and white, gritty and gorgeous, commercial and creative, Saturday night and Sunday morning.

"I Heard it Through the Grapevine." "My Girl." "The Tears of a Clown."

Like the two-sided singles the Motown factory churned out 24 hours a day, seven days a week at Studio A inside the Hitsville, U.S.A., building at 2648 West Grand Boulevard, Motown Records in the 1960s stood out from the musical pack -- and still does today -- because of its ability to tune the tension between two opposing forces.

The Associated Press, on the occasion of Motown's 50th, invited both Motown greats and heavyweights from the worlds of music and beyond to discuss how the legendary Detroit musical movement's sound, style, savvy and sensuality have stood the test of time.

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#### **GETTING STARTED:**

"The thing that struck me was how ferociously determined he had to be to borrow that 800 bucks and start with nothing." -- Bill Clinton, former U.S. president

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The tale of the \$800 loan has become the stuff of legend.

Gordy worked at a Ford Motor Co. plant and wrote songs when he could, all the while dreaming of owning and running his own record company.

The loan from his family's savings club allowed him to make that happen.

He had the vision and the seed money, but next Gordy needed the talent -- the singers, songwriters and musicians.

He didn't have far to look.

Detroit alone produced many of the creative wizards who gave Motown its initial burst.

Robinson and the Miracles attended high school together, while Ross and future Supremes Mary Wilson and Florence Ballard grew up in the city's housing projects.

Gordy plucked from Detroit's flourishing nightclub scene a group of supremely talented jazz musicians who would become the label's house band, the Funk Brothers. Strings, winds and brass

**Exhibit A**

**Page 8**



came from the Detroit Symphony Orchestra and other classical outlets.

And the prolific songwriting trio known as Holland-Dozier-Holland -- Lamont Dozier and the Holland brothers, Brian and Eddie -- also were local hires.

The talent was there. Now what?

Gordy sought to incorporate some of the same principles from the auto factory floor and bring them to bear in the studio on West Grand.

He wanted it to be a place where everybody had a role, but the best ideas would win.

"Berry Gordy made sure everything they put out was 100 percent fierce, 100 percent listenable," said R&B singer Patti LaBelle, who was not a Motown artist but rose alongside it in the 1960s.

"Then, you know if you ... put on a Motown record, you were going to hear something with substance."

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#### **MUSICIANSHIP/CREATIVITY**

"Berry Gordy -- people think of him as an entrepreneur, but he's a songwriter at heart, which makes total sense. You have a songwriter here and amazing songs. A guy has the brilliance to understand that it starts with great songs." -- Anita Baker, R&B singer

-----

Of course, it started with songs, but even that came with a competition more common to commerce than art.

Gordy knew cooperation was crucial but rivalries among singers as well as songwriting teams would be the best way to get a record out the door and onto the top of the charts.

"If (songwriter) Norman Whitfield had a No. 1 hit on The Temptations, Holland-Dozier-Holland would say, 'Shoot, we gotta get a No. 1 with The Four Tops. Come on in here, Tops,'" recalled Abdul "Duke" Fakir, the lone surviving original member of The Four Tops, which signed with Motown in 1963 and produced 20 top 40 hits during the next decade.

"I'd say, 'Yeah man, you'd better hurry up, man. I got a bet with The Temptations we're gonna have one in the next two weeks.' We would just push and push and push."

Fakir says there was a relentlessness on all levels of the recording process.



"Nothing was done generically. I've been to a lot of sessions outside of Motown where the session is very generic, very laid-back ... very professional, and there's no guts and blood," he said. "But here, everything was done with passion."

In 1965, during his label's ascendancy, Gordy said passion helped spur Motown to greatness.

"I talked about this one night over dinner with Smokey and Diana Ross," he told AP at the time. "We thought back about the neighborhoods we were in ... and we came up with a six-word definition: rats, roaches, struggle, talent, guts, love."

Motown left nothing to chance: A "quality control" committee met weekly to review the latest sonic offerings. Gordy was the final arbiter, but posed this question: Would you buy the record or a sandwich if you were down to your last dollar?

Don Felder, former guitarist for the Eagles and co-writer of their hit "Hotel California," says the results rarely failed.

"I don't know if anybody ever sat down and looked at the percentages of acts that Berry actually signed, recorded and released and the percentages of hits versus failures. But his track record has just been astronomical. ... He has just, in my opinion, the ears of a genius."

-----

### **SOUND/RECORDING:**

"You had naturally gifted engineers and producers that didn't let that technical expertise interfere with that rawness. ... Somehow the ... engineer/producers, thank God, either admittedly or just instinctually saw when these guys started jamming it just sounded good." -- Ted Nugent, rock guitarist and singer

-----

Gordy may have been blessed with an unparalleled ability to recognize hits, but many say those great songs probably would've been a bit more ordinary if not for Studio A.

It didn't look like anything special -- certainly by today's standards of digitized recording -- but the sounds it produced were.

"You didn't have Pro Tools. It was perfectly imperfect," said country star Wynonna Judd. "You had a lot of people who were sweaty and tired and who were singing from their toenails. ... If you can't cop it live, get off the porch."



A square, smallish room, Studio A was accessed by descending a small flight of stairs. Its below-ground standing earned it the nickname "The Snake Pit."

There, artists, writers, producers, engineers -- anybody associated with music-making -- gathered to record.

For 13 years, nearly every Motown hit was cut in Studio A and the adjacent control room.

The Funk Brothers set up shop -- James Jamerson on bass, Benny Benjamin on drums and so on -- and the singers did their thing, all face-to-face in the same room.

"The studio itself is its own beast. It can take away or it can add to the sounds you're making with your instruments," said pop singer-songwriter Gavin DeGraw. "Some rooms are dead. You play a note, and the sound disappears.

"Some rooms they ring too much. Acoustically, they're just too active. But some of them, they just have good sound. The (Motown) recordings I've heard come out of that room. I listen to those recordings all the time, and I think: 'Why does that room sound so good?' There's something to be said for it."

DeGraw liked the Motown recording approach so much that he rereleased his 2003 hit album "Chariot" a year later in a "stripped" format.

"I was really using that Motown ... sound as a template," he said. "I was thinking about those records and the rawness of those records."

The "sound" itself was a blend of traditional gospel, jazz, R&B and pop that had crossover appeal for audiences of all ages and races.

-----

#### **SOCIAL CHANGE/RACE:**

"It was the first, I think, black record company that was able to make the transition ... and was not only for the black music audience but also for a world music audience. I think that's what Motown represented." -- Danny Glover, actor and activist

-----

When Motown was born, as Robinson tells it, songs produced by African-American artists automatically were categorized as R&B, while a similar sound coming from a white artist would have been classified as pop.



But Gordy would have none of it. He set out to make music for all people, not "black music for black people" as had been the standard. While certain African-American artists had found a wider audience in the jazz and early rock-and-roll eras, Gordy took it a step further by pushing a sound that gained universal appeal and helped break down racial barriers in music.

His belief was that quality music would find its way into the ears of all, regardless of race.

"I think that's why it was so successful as a social tool, because it wasn't race-specific," DeGraw said. "It was just great music.

"And it allowed people to look past those typical lines. ... People could hear music like that in a time when people were looking at each other strangely, wondering what their motivations were, and they could go: 'Hey man, OK, no one's holding a grudge. It just sounds good. Let's enjoy ourselves.'"

For Baker, Motown's barrier-busting ways hit home.

"I remember 'The Ed Sullivan Show.' ... I'm a little kid. Every Sunday, Ed Sullivan comes on. And you get to see all of these artists from around the world. But Diana Ross and The Supremes come on. And I saw myself. Do you understand? I saw me," she said. "I saw a little black girl. ... I saw myself in a way I had never seen it before."

Motown billed itself as the "sound of young America," and it was that demographic that found itself at the center of the growing civil rights movement. Rosa Parks was arrested in Alabama a few years before Motown's founding, but the movement gained steam at the same time Motown did.

"Back in the '60s, when we weren't allowed to do or go certain places, our music crept into people's homes ... into their bathrooms, their bedrooms, their living rooms, their kitchens, their cars," Fakir said. "We spurred marriages and poor little crib babies ... 'cause parents were playing (our) music. ... That's how our legacy is going to be carried on."

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#### **LEGACY:**

"That sound is just as alive today. And that sound still stands up. ... Everybody in the whole wide world has been influenced by Detroit and the Motown sound." -- Dolly Parton, country singer, songwriter and actress

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Motown was groundbreaking in many ways -- from its signature sound and lengthy list of high-



profile artists to the unique way it created and recorded music -- but what's harder to pin down is what's kept the sound alive all these years.

"You hear (Motown) in almost everything," said Wilson, one-third of The Supremes. "I think Motown music, the Motown sound, is the model, the template that people use today in the music, and yes, you can hear it."

For many artists, it's inevitable that they would tread over some of the same ground because of the music's quality and distinctiveness.

"You can't get within sniffing distance of music, whether as a performer or listener, without being definitively impacted by these gods of thunder from Motown," said Nugent, the "Motor City Madman" who as a teenager played in a band that opened for The Supremes at Cobo Hall in Detroit.

Swift, a country singer-songwriter, admits it: She's one of the those whose sound is influenced by Motown. The 19-year-old, who has entered the realm of superstardom after back-to-back multi-platinum albums, says she and her father listened to his Motown greatest hits CD on the way to school.

"From an early age I had a bunch of different musical influences, but Motown I was just always so fascinated by the chord progression and how the lyrics and the melodies are so simple but they made you feel so much. I think that's the art of Motown," Swift said.

Another of the music world's hottest young acts, the Jonas Brothers, couldn't hide their glee at performing on this year's Grammy Awards telecast with Wonder, saying beforehand both they and their father grew up on the Motown legend's songs.

Not only did Motown bridge racial and generational gaps, but it also succeeded in crossing cultures.

Beatles manager Brian Epstein promoted Motown revues in the United Kingdom, which were popular with fans and stars alike. Fakir recalls being at a party with The Beatles, where the Fab Four peppered The Four Tops with questions about how they sang their harmonies and achieved other elements of their sound.

Motown even penetrated the Iron Curtain.

"I was in Russia some years ago before the walls came down. And we couldn't hardly get into Russia at that time -- the Cold War," said the Rev. Jesse Jackson. "All night long they played The Supremes, The Temptations, Stevie Wonder, Smokey Robinson. So the joy of Motown has been infectious around the world."



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**CODA:**

"Let's just say it's a collision of grit and beauty. They're raw records. ... But they're beautifully crafted. They're wonderful to listen to, on every level." -- Don Was, record producer and musician

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Another global sensation, the late Michael Jackson, also got his start at Motown as a member of The Jackson 5.

Gordy, at Jackson's memorial service in July, talked about the 10-year-old prodigy he signed, calling him "the greatest entertainer that ever lived."

Jackson and his brothers became instant teen sensations, but his stratospheric success came post-Motown in his adult years; he and his brothers left the label in the mid-1970s.

The Jackson 5 were one of the first acts to come up as Motown left Detroit for Los Angeles in the early 1970s. Most agree Motown's own California adventure has had its moments, but they don't match what happened in its hometown.

The Jackson 5, Gaye, Robinson, Ross and Wonder made the transition to L.A. and had chart-topping success, as did acts ranging from The Commodores to Rick James. Despite the plentiful hits among them, the sound was being challenged by newer grooves, and Motown lacked the deep roster it once had.

But by 1988, Gordy was ready to move on, selling Motown Records to MCA and a private equity firm. It was sold to PolyGram in the 1990s and now is held by Universal, where current acts include Lil' Wayne, Erykah Badu and Nelly.

Regardless of its present physical location, Motown is a Detroit creation, and that struggling Midwestern metropolis always will identify itself with the music.

"I'm glad they started in Detroit, and I hope that given the troubles they've got in Detroit now I hope they'll find some new version of Motown -- maybe in clean energy or something -- and 50 years from now somebody will be interviewed about that because Detroit gave America a great gift there," Clinton said.

Gordy and Robinson don't get back to Detroit all that often these days, but they were front and center at Hitsville on a crisp day this past March.



Contestants on the smash Fox singing competition "American Idol" came to Studio A to film segments for the show.

"I called it 'Motown,' rather than 'Motor City,' because there was more warmth here," Gordy told reporters that day. "The town was just beautiful. ... I may have left Detroit but wherever I go I carry Detroit with me. They know that's a Detroiter."

Robinson said the building that now houses the Motown Historical Museum was where "his real life began."

But the music that Robinson and scores more churned out of the cramped, sweaty confines of Studio A between 1959 to 1972 belong no more to them than the world.

"You can't ever know why something becomes timeless, whether it's the Jacksons, anybody. Beethoven -- we don't know," said Leonard Slatkin, music director of the Detroit Symphony.

"Maybe it's a simple thing: It's infectious. ... Something about this music -- I don't think of as being from the '60s or '70s anymore when I listen to it. It seems very fresh and new."

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AP Music Writer Nekesa Mumbi Moody in New York contributed to this report.

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n b o b h f s - j o u f u b q f r j c s b s z - u f r a c f n b e d j w f n b o b h f s - b o e j o u f t q f d j b m  
n b s l f u t e f q b s n f o u

Cz 2: : 6- N pupx o i be s r p d u f e j u t i f b e r v b s f s t b h b j o - u j t j n f u p O f x  
Z p s l / B o e b t c f g s f - H f p s h j b s n b j o f e c f i j o e i p r e j o h e p x o u f w j u b n l p c p g  
n b o b h j o h u f b s d j w f t / U x p z f b s t r a u s - x i f o d v s s f o u q s f t j e f o u D F P H f p s h f  
K o d t p o u p l u f i f m p g u f d p n q b o z - i f n b o e b u f e h s f b u f s f y q r p s u j p o p g  
N p u p x o t f y i b v t u j w b s d j w f t j o b o f g g s u p j t t v f s b s f - q s f w j p v t r a v o i f b s e  
s f d p s e j o h t J b u t l j e f b m a t v j u f e g s H f p s h j b - x i p l o f x u f j o e f y j o h b o e  
d o u b r p h g r f t c f u f s u b o b o z p o f /

#U t b n b j o h i p x n v d i v o u b q q f e n v t j d f y j t u j o p v s w b v r d < s b s f -  
v o s f r h b f e - h p t q f m T q b o j t i - i b s e . u p . g o e d r h t j a t - f u d f u s b - u b u l b n j o u f  
q s p d f t t p g d p n q j r j o h g s s f r h b f / Q p s f y b n q r h - u f s' b s f e v f u s f d p s e j o h t x j u  
T u f w j f X p o e f s b o e U f f Q p v s U p q t M w j T w c c t b t x f m b t n b o z p u f s t - # t i f  
s f q p s l /

Hf pshjb x bt brtp rshf m s f t q p o t j c r h g s t f r h d j o h u f 51 t p o h t u b u  
b q q f b s p o N p u p x o t t j h o b u s f b o o j w f s t b s z e p v c r h D E s f r h b f - # N p u p x o 51  
Q p s f w f s' # # T p n b o z b s j t u t i b w f q b t t f e u s p v h i u f e p p s t p g N p u p x o - b o e u p e b z  
p v s b o u C p z { J J N f o s r f i t u f s b e j p - # H f p s h j b t b z t / # U f r a c f n j t d p n j o h g r m  
d j s d r h x j u p v s o f x q s f t j e f o u x i p x b o u t u t i b s j u b m x j u f w f s z p o f b o e J n  
h w t u b l j o h j u p o f e b z b u b j n f / #

B s j d r h d p q z s j h i u Q j r b e f r q i j b U s g c v o f D p n q b o z - J o d /  
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HSBQI JD; Q pup- Hf pshjb X bse

KPVS O B M D P E F ; Q U

MPBE.EBUF; Bvhvtu28- 3112





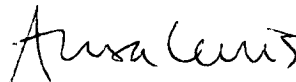


**CERTIFICATE OF MAILING**

Date of Deposit: September 15, 2009

"Express Mail" mailing label number: EB 519288517 US

I hereby certify that this paper or fee, **NOTICE OF RELIANCE RE: PRINTED PUBLICATIONS**, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" on the date indicated above and is addressed to: UNITED STATES PATENT AND TRADEMARK OFFICE, Trademark Trial and Appeal Board , P.O. Box 1451, Alexandria, Virginia 22313-1451.



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Alexa L. Lewis



**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

On September 15, 2009, I served a copy of the foregoing document(s) described as **NOTICE OF RELIANCE RE: PRINTED PUBLICATIONS** on the interested parties in this action at their last known address as set forth below by taking the action described below:

Lawrence Y. Iser ( <a href="mailto:liser@kwikalaw.com">liser@kwikalaw.com</a> ) Direct (310) 566-9801 Direct Fax (310) 566-9861 Patricia A. Millett ( <a href="mailto:pmillet@kwikalaw.com">pmillet@kwikalaw.com</a> ) Direct (310) 566-9821 Direct Fax (310) 566-9870 Chad R. Fitzgerald ( <a href="mailto:CFitzgerald@kwikalaw.com">CFitzgerald@kwikalaw.com</a> ) Direct 310.566.9802 Direct Fax 310.566.9882 Kinsella, Weitzman, Iser, Kump & Aldisert LLP 808 Wilshire Boulevard, 3rd Floor Santa Monica, CA 90401 (310) 566-9800 Fax: (310) 566-9850	Counsel for Applicant, MATTEL, INC.
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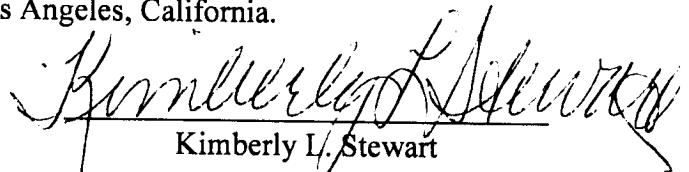
- ☒ **BY MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) addressed as set forth above, and deposited each envelope in the mail at Los Angeles, California. Each envelope was mailed with postage thereon fully prepaid.
- ☐ **BY OVERNIGHT MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) designated by the carrier, with delivery fees provided for, and addressed as set forth above, and deposited the above-described document(s) with \_\_\_\_\_ in the ordinary course of business, by depositing the document(s) in a facility regularly maintained by the carrier or delivering the document(s) to an authorized driver for the carrier.
- ☐ **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed envelope(s), and caused personal delivery by \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth above.
- ☐ **BY ELECTRONIC MAIL:** I served the above-mentioned document electronically at \_\_\_\_:\_\_\_\_.m. on the parties listed at the email addresses above and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.



☐ **BY FAX:** On \_\_\_\_\_, at \_\_\_\_\_ am/pm, from facsimile number (310) \_\_\_\_\_, before placing the above-described document(s) in sealed envelope(s) addressed as set forth above, I sent a copy of the above-described document(s) to each of the individuals set forth above at the facsimile numbers listed above. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of that report is attached hereto.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on September 15, 2009, at Los Angeles, California.

  
\_\_\_\_\_  
Kimberly L. Stewart



**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No. 78/751,105  
Published for Opposition in the OFFICIAL GAZETTE on December 12, 2006

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UMG RECORDINGS, INC.

Opposition No.: 91176791

Opposer

v.

MATTEL, INC.,

Applicant

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**TRIAL DECLARATION OF PETER CAPARIS**

PETER CAPARIS declares under penalty of perjury as follows:

1. I am the founder of The Caparis Group LLC, a sales and marketing consulting firm. Specifically, The Caparis Group is retained by sports, entertainment, consumer products, publishing and philanthropy clients to, among other things, provide integrated sales and marketing solutions involving areas such as sponsorship, licensing, product development, and strategic alliances. I have over 30 years experience in consumer sales and marketing, including an emphasis on sponsorship and licensing. During my career I have been involved in all aspects of marketing, including devising marketing plans, naming products, exploiting brands, and the advertising and promotion of branded and trademarked products. I have also taught a course at the UCLA Anderson



School of Management that involved the use of entertainment and sports in marketing.

My CV, fee statement and materials reviewed are attached hereto as Exhibit 1.

2. I have read the Trial Declaration of Lawrence Ferrara submitted by Applicant, Mattel, Inc. I have prepared this declaration at the request of Opposer, UMG Recordings, Inc., in rebuttal to Mr. Ferrara's testimony. As I will describe hereafter, Mr. Ferrara, who is a musicologist and does not indicate that he has any experience or expertise in marketing, has missed the point. He has viewed this Opposition from a "musicological perspective" and engaged in what he calls "musicological research," when in fact the trademark issue at hand is a marketing/branding issue.

3. The starting point for my analysis has to be the fame of the "Motown" trademark. That Motown is "widely known as a record company" is clear, as Mr. Ferrara himself acknowledges. Moreover, it is indisputable – and Mattel does not appear to dispute – that Motown is an extremely famous and highly recognizable trademark. I, of course, was familiar with the Motown trademark before I was retained in connection with this matter, and in addition I have reviewed some of the history of the Motown mark. As Berry Gordy, the founder of Motown Record Corporation, reports in his own book, the name "Motown" was devised by him almost 50 years ago. (An excerpt from this book is attached as Exhibit 2.) The story of how Gordy used part of "Motor City" (a long-time nickname for Detroit) by taking the "Mo" from "Motor" and adding "town" is widely reported and apparently uncontradicted. For example, Mattel has submitted an excerpt from another book that explains, "Gordy returned to his favorite method of combining a couple of names. Detroit had long been known as the Motor City because of the car industry. In place of city, Gordy substituted town, and a contraction of the two gave him



Motown.” (See Applicant’s Notice of Reliance Re: Printed Publications, vol. 3 of 7, Exh. A, page 344.)

4. Over the years, Motown has been the subject of enormous media attention, including in the popular press and in books. In addition to the works mentioned above, some of the numerous books written exclusively about Motown are P. Benjaminson, The Story of Motown (1979); D. Waller, The Motown Story: The Inside Story of America’s Most Popular Music (1985); S. Davis, Motown: The History (1988); J. R. Taraborelli, Hot Wax, City Cool and Solid Gold: Motown (1986); B. Fong-Torres, The Motown Album (1990); and G. L. Early, One Nation Under A Groove: Motown and American Culture (revised ed. 2004). (See Exhibit 3.) The widespread media coverage of Motown’s recently celebrated 50th anniversary, which coincided with the release of a 10-CD boxed set containing all of Motown’s #1 singles, included feature articles in Vanity Fair (“It Happened In Hitsville” [December 2008]), and the New York Times (“Motown Turns Fifty, But the Party’s Far from Over” [September 5, 2009]). (See Exhibits 4, 5.)

5. For the past 50 years, Motown has been used as both the name of the Motown Record Corporation and the successors thereto, and a trademark for Motown products. (Of course, it has been registered several times with the U.S. Patent and Trademark Office.) Among other things, Motown recordings have been in the marketplace continuously and have sold well over one hundred million copies. (The website of the Recording Industry Association of America, Inc., reflects that Motown’s sales of “Platinum” albums alone, i.e., albums certified by the Association to have sold



more than one million copies, exceed 100 million copies.<sup>1</sup> See Exhibit 6.) Motown recordings are also among the most successful and recognizable recordings in history, embodying the performances of such artists as The Jackson Five, The Supremes, The Temptations, Stevie Wonder, and Marvin Gaye, to name a few. The mark “Motown” has been widely advertised. (See examples provided in Exhibit 7.) There is a “Motown Museum” devoted to the record label. (See Exhibit 8.) As indicated above, Motown’s 50th anniversary has been celebrated with special events and products; its 40th Anniversary celebration likewise received widespread publicity and included a hit television special, “Motown 40: The Music Is Forever.” (See Exhibit 9.)

6. In these ways, among many others, the trademark “Motown” has become widely known and extremely strong. It is even referred to in dictionaries as a “trademark.” See, for example, The New Grove Dictionary of Music and Musicians (2d ed. 2001) attached as Exhibit B, pp. 17-18 to the Ferrara Declaration, stating “Motown: American record company specializing in black soul music; the name is the registered trademark of the company”; and The World Book Dictionary (2003) referring to “Motown” as “a trademark of a Detroit record company.” (Excerpts from both works are provided in Exhibit 10.)

7. The Motown trademark also has been used and licensed, including as most important here, for toys, games, and playthings, such as board games, stuffed animals, video games, karaoke CDGs, musical toy keychains, novelty pens and pencils, superballs, and the like. (See e.g. Trial Declaration of William Waddell, Exhs. J-T; Declaration of

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<sup>1</sup> According to the RIAA website, the certification of Platinum albums began in 1976.



Deanna Czapala, Exhs. 2-3; Declaration of William Schulte, Exh. 2; Declaration Michael Rajna, Exh. 2; Declaration of Anton Handal, Exh. 3; Declaration of Melissa K. Cote, Exh. 1.) There is a natural connection between such products and the Motown record label, since record companies are widely known to sell "merchandise," which Motown does. In addition, the Motown trademark has been used on a variety of other products, including T-shirts, hats and other clothing, merchandise such as magnets, pins, wristbands, totebags, glassware, and coasters, comic books, and "Motown Cafés" in Orlando, New York, and Las Vegas. (See id. and examples provided in Exhibit 11 and Trial Declaration of Jerry Juste, Exh. H.) When the Motown trademark was licensed in 2003 for use on a karaoke CDG, a UMG Strategic Marketing executive was quoted as stating that this license was "part of the ongoing merchandising initiative behind the Motown brand." (See Exhibit 12.)

8. Mr. Ferrara's entire declaration is dedicated to showing that there is a "Motown style." To the extent that is the case, that simply evidences the strength of the Motown mark. There is no doubt that the "Motown" in "Motown style" refers to the product and goods of Motown Record Corporation and the successors thereto. The fact that Motown has been used to describe a style of music does not denigrate, but rather strengthens, its trademark and branding significance. It is only very strong and famous trademarks that are used in this manner. (Examples would be calling certain actions "mickey mouse" or a politician "teflon" or referring to "the Rolls Royce of products.") I also note that most often in the illustrations provided by Mr. Ferrara the word "Motown" in "Motown style" is capitalized (as opposed to other types of music), further evidencing its use as a trademark. *However, most important here, the trademark Motown is not used*



*by Mattel in the sense of a style of music but only as a purported trademark on the packaging of a product.*

9. Similarly, the evidence submitted by Mattel that refers to the city of Detroit as “Motown” also shows the strength of the Motown trademark as it refers to the record company. (Of course, Detroit is also known as “the Motor City” and “the big D,” among other nicknames.) Moreover, all of the references to Motown as one of the nicknames for Detroit that were submitted by Mattel are references in various media articles. *They are not trademark uses or associated with a product, in distinction to the trademark uses of UMG and now Mattel.* Any association of Motown in the minds of consumers with the city of Detroit is an association derived from the previous and ongoing fame and power of the Motown mark. The earliest use of “Motown” to refer to the record company, as reported in the Oxford English Dictionary Online, is 1961, while the earliest use of “Motown” to refer to the city of Detroit is ten years later in 1971. See Applicant’s Notice of Reliance Re: Printed Publications, vol. 3 of 7, Exh. A at 317-18, submitted by Mattel. An official Michigan website concerning historic preservation specifically refers to the record company’s influence: “In 1980 the Motown Historical Museum was established at Hitsville U.S.A. to commemorate the Motown Sound and to memorialize Motown’s distinctive heritage and its global impact.” (See Exhibit 13.) In essence, this “distinctive heritage” caused the city to become known (and sometimes referred to) by one of, if not its most, significant businesses and strongest trademarks: “Nashville has country music. Chicago has the blues. New Orleans has Dixieland. Seattle has grunge. *And Detroit will always identify itself with Motown, the 40-year-old record label that set new standards for black performers in the record industry and the*



*rest of the business world.” Crain’s Detroit Business*, November 1, 1999. (See article attached as Exhibit 14, emphasis added.)

10. I will now further describe, from a marketing perspective, the reasons that, in my opinion, the use by Mattel of the Motown mark likely will cause confusion and likely will dilute UMG’s trademark.

11. Initially, it should be pointed out that the fame of the Motown mark had reached those at Mattel who named their product “Motown Metal.” They knew not only of the Motown label but also of its famous recording artists. However, Mattel’s use of “Motown Metal” is curious. There is no doubt that Mattel purports to use it as a trademark (even seeking this registration), and indeed, in my opinion, it does use it, albeit confusingly, in that manner on its toy cars. But there were other choices that Mattel could have made that would have been more appropriately matched to the handful of Hot Wheels toys (or the “segment,” as Mattel calls it) that are so-called “muscle cars.” For example, in its internal documents that I have reviewed, Mattel initially named these cars “Muscle Cars,” not Motown Metal. (See e.g. Exhibit 15.) Indeed, the name Motown Metal does not specifically describe this genre of car, but “muscle cars” does just that. However, while “muscle cars” could refer to many of the hundreds of Hot Wheels cars, Mattel purported to use “Motown Metal” only on this one segment of five cars and does not use it anywhere else (as opposed to the widespread use by Motown Record Corporation and the successors thereto). Further, apparently Mattel used the “Motown Metal” name for only two years, has not used it since 2007, and has no plans to use it again. (See e.g. Mattel’s Responses to UMG Interrogatory Nos. 1, 11, 13, attached as Exh. B to UMG’s Notice of Reliance Re: Written Discovery Responses.) Thus, there



would be no reason for the public or the consumer to associate Motown or Motown Metal with Mattel and every reason to associate it with UMG's ubiquitous Motown trademark.

12. The Two "Marks" Are Identical: Probably most important from a marketing perspective (including the likelihood of confusion "Motown Metal" will engender) is the fact that the Motown trademark and Motown Metal are, from a consumer standpoint, identical. The reasons for this are multiple: first, the word "Motown" is the most dominant aspect of "Motown Metal"; it comes first, and it modifies the word "metal." Second, the word "metal" is not part of the "brand" but is merely descriptive of the metal composition of the toy and would be ignored by consumers as a source of origin. Third, the typeface of the Motown trademark and "Motown Metal" is the same plain typeface. Finally, Mattel even uses a stylized "M" in connection with Motown Metal, just as Motown Record Company has used a stylized "M" in connection with its Motown trademark. See e.g. Exhibit 16 (Deposition of Raymond Adler at 75); Exhibit 17. Beyond being identical, in the second year of its use, Mattel even increased the size and prominence of "Motown Metal" on its packaging. (See Exhibit 17.) In sum, the appearance, the sound, and the impression of the two "marks" are the same.

13. Type of Goods/Channels of Trade: Further contributing to likely consumer confusion are various factors relating to the type of goods on which the Motown mark is used and their channels of trade. *Both Mattel and UMG use the Motown trademark on toys and playthings.* Both products are leisure goods, nonessential, and collectible. ("Forever Collectibles," one of the licensees of the Motown mark, is one of the largest manufacturers of collectible playthings.) In addition, both the toys and playthings licensed by UMG, and Motown recordings themselves, are sold in the same



type of outlets as Motown Metal toys, and frequently in the same outlet itself, including in major retail stores and on the Internet. Those two sources are now the two largest sources for sales of Motown recordings and also sell Hot Wheels (including Motown Metal). Examples of where both Mattel's Motown Metal toys and Motown Records are currently sold include the popular websites Amazon.com and eBay.com, and both have been sold by K-Mart stores, Wal-Mart stores, Target stores, and Toys "R" Us. (See Exhibit 18; Exhibit 16, Adler Deposition at 100-101.)

14. Demographic: The consumer group for Mattel's Motown Metal product and UMG's Motown branded products are the same or at the least significantly overlap. Mattel has claimed that Motown Metal cars are aimed at children as well as adult collectors, and Mattel has maintained separate Hot Wheels websites for these two groups. (See Exhibit 19 and Mattel's Response to UMG Interrogatory No. 15.) Together they cover a large age range. Of course, the Motown-licensed toys and playthings (and many other licensed items) also are for children; however, frequently they will be purchased by adult collectors who are very familiar with the Motown mark. Both recordings on the Motown record label and Motown Metal cars (which are circa 1970s) even evoke the same general era of approximately 40 to 50 years ago. (As a result, as noted, Motown had a large 40th Anniversary campaign, and Mattel released a "40th Anniversary Motown Metal" two-car collector set. See Exhibit 20.) Further, teenagers (or younger), who are among the largest group of purchasers of recordings, will be very familiar with the Motown name. Motown's internal marketing materials highlight the brand's "inclusive" and "generational" appeal: it is thus no surprise that the label has released recordings especially geared to children, e.g. "Motown for Kids" in 2008 and, earlier, "A



Flintstones Motown Christmas,” and, in addition to licensing other toys and games, has licensed videogames based on its recordings. (See e.g. Exhibit 21 and Notice of Reliance Re: Evidence Filed in UMG Records, Inc. v. O’Rourke, Trial Declaration of Lori Froeling, Exh. 24 at p. 11.)

15. Impulse Purchase/Level of Care: Both the Motown Metal toys and the Motown branded toys are classic impulse purchases. At a suggested retail list price of 99 cents, the Motown Metal toys are very inexpensive. The Motown Metal cars are interchangeable with hundreds of other Hot Wheels cars and the specific models (and their names) are replaced often; therefore, any particular toy car (and any Motown Metal car) likely is bought on impulse, not by prior design or plan. Moreover, the fact that Mattel does not separately advertise Motown Metal cars (and retailers cannot even buy them individually but only in random groups which may or may not include the Motown Metal cars) evidences that buyers do not specifically target Motown Metal cars for purchase but rather that their purchase is impulsive. See Mattel’s Supplemental Response to UMG Interrogatory No. 18 (in Exh. C to UMG’s Notice of Reliance Re: Written Discovery Responses) and Exhibit 16, Adler Deposition at 98-99. Further, as Mattel has testified, color that attracts children to a particular car – another sign that they are purchased on impulse. (See e.g. Exhibit 16, Adler Deposition at 115.) Finally, the purchasers of Motown Metal cars are either children or adults purchasing for children. In either event, they are not sophisticated (nor need they be) in purchasing the inexpensive toy products involved. (Even the “collectors” version of Motown Metal cars are inexpensive, with a suggested retail price of \$19.99, and often also would be impulse buys.)



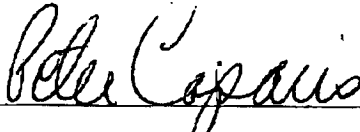
16. As a marketing expert, I can explain the fact there is no evidence of actual confusion here. First, the Motown Metal cars were on the market for only a relatively short period of time (two years) and, as noted, were never advertised by Mattel. Second, and probably most important, if there were actual confusion as to source and a purchaser believed that Motown Metal was associated with Opposer there would be no cause for the consumer to complain, either the Mattel or to UMG. Therefore, I would not expect there to be actual consumer complaints evidencing confusion.

17. My conclusion, based on my experience and the materials I have reviewed, is that the use of "Motown Metal" by Applicant is likely to cause confusion as to source among consumers who would likely believe that there is some connection between Motown Metal and UMG, and/or that UMG licensed its trademark in some fashion to Mattel, and that Motown Metal is another use of the famous Motown mark associated with UMG that has been used in connection with a variety of products (including toys and playthings). This conclusion is only reinforced by the fact that the packaging on the Motown Metal cars provides a lengthy list of other trademarks for which Mattel claims to have obtained a license. For that reason, the consumer would believe either that UMG licensed its trademark *or* that no license would be necessary to use the Motown mark. In either event, UMG would be significantly harmed, the Motown



mark would be substantially diluted, the ability to license the mark for toys would be diminished, and its value lessened.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on September 14, 2009, at Rolling Hills Estates, California.

  
PETER CAPARIS



**UMG RECORDINGS, INC. v. MATTEL, INC.  
OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT 1  
TO TRIAL DECLARATION  
OF PETER CAPARIS**



## PETER CAPARIS

609 Deep Valley Drive, Suite 200  
Rolling Hills Estates, California 90274  
Email: peter@caparisgroup.com

Work: (310) 265-4477  
Cell: (310) 283-5237  
Fax: (310) 265-4478

### SUMMARY

Dynamic senior Sales and Marketing executive with proven record of driving sales across all retail channels, with emphasis on negotiated sports and entertainment properties. Exceptionally skilled at building and managing strategic alliances with global brands such as Wal-Mart, The Walt Disney Company, McDonalds, the NBA, The Coca-Cola Company and the Olympic Games. Expertise includes:

- Strategic Planning
- Global Sponsorship and Licensing
- Deployment of Technology Solutions
- Global Account Management
- Strategic Partnerships & Alliances
- Building Organizational Consensus

### PROFESSIONAL HISTORY

**THE CAPARIS GROUP, LLC**, Rolling Hills Estates, CA  
*Leading sales and marketing consultancy*

2005 - Present

#### PRESIDENT

Provides clients with integrated sales and marketing solutions in number of areas which include, but are not limited to: sports, entertainment, consumer products, publishing and philanthropy. Provided sponsorship, licensing, product development, strategic alliance and other marketing in support of clients such as:

- Toronto Zoo: Developed sponsorship strategy for fundraising
- Boys & Girls Clubs of America: Fundraising strategy around sponsorship of the B&GCA 100<sup>th</sup> Anniversary.
- National 4-H Council: Development of a line of licensed 4-H dolls exclusively for Wal-Mart.
- AARP: Developed a sports and entertainment marketing strategy to generate and maintain AARP memberships.
- Aflac Insurance: Developed a strategy to expand customer base beyond small business owners to Fortune 500 companies.

**SCOTT BORAS CORPORATION**, Newport Beach, CA

*Industry leader in athlete representation, including branding and corporate endorsements*

2001 - 2005

#### PRESIDENT, IMPACT MARKETING SOLUTIONS DIVISION

Recruited to develop and implement integrated sales and marketing strategies.

- Generated revenue in excess of \$3 million in year one, while raising top client's Q Score by 25%.
- Signed New York Yankee centerfielder Bernie Williams to a recording contract with Verve Records. Successfully produced and marketed the CD which sold an unprecedented 200,000 units. Marketing efforts included a nationally televised, Emmy Award winning concert from the House of Blues.
- Developed and launched Player Direct Collectibles, a memorabilia business designed to enhance client image and maximize client revenue. First year sales projected at \$1 million, through projects with artist Leroy Neiman and others.
- Developed brand AROD and AROD.com on behalf of New York Yankee third baseman Alex Rodriguez, with consumer launch scheduled for early 2005.



**SAPIENT, Los Angeles, CA**

*Leading business and technology consultancy*

2000 – 2001

**DIRECTOR, NATIONAL SALES**

Recruited to add consumer products expertise to Sports, Retail, Consumer Products and Entertainment practices.

- Sold an assessment of organizational structure, technology architecture, and business processes to The Gap, Inc. Follow-on work will generate revenue for Sapient in excess of \$15 million.
- Secured first Sapient project with NIKE, Inc., an assessment of nike.com which will result in annual savings of \$1 million.
- Initiated the first Sapient workshop on cross-channel integration with NIKE, Inc., and drafted the first NIKE direct to consumer strategy.

**MATTEL, INC., El Segundo, CA**

*\$5B global leader in the sale of consumer products, including Barbie and Hot Wheels*

1995 - 2000

**VICE PRESIDENT, GLOBAL CUSTOMER DEVELOPMENT (1999 - 2000)**

Led corporate centralization initiative, providing strategic planning to Mattel affiliates in over 150 countries with regard to global retailers Toys R Us, Wal-Mart, Carrefour, Royal Ahold and Costco.

- Chaired Global Retail Executive Committee; established and led dedicated global account teams; initiated first global analysis of Mattel trade practices across markets.
- Increased Wal-Mart sales 10%, after three years of decline. Increased Toys R Us sales 15%, after a three-year decline of 25%. Accomplished through joint global planning and implementation of best global trade practices.

**VICE PRESIDENT, STRATEGIC ALLIANCES (1997 – 1999)**

Responsible for contracts and relationships with global corporate alliances and professional athletes.

- Generated incremental annual Mattel sales of \$30 million and expanded the Barbie and MatchBox franchises through a multinational strategic licensing agreement with The Coca-Cola Company.
- Negotiated master toy license for the 2000 Sydney Olympic Summer Games; oversaw product line development; built an annual business plan of \$75 million.
- Negotiated licensing rights for the 2002 Salt Lake Olympic Winter Games mascots; oversaw development of a \$300 million business plan, including design consultation.

**VICE PRESIDENT, MARKETING SERVICES (1995 – 1997)**

Recruited to oversee merchandising, space management, promotion, retail service, new business development, key account planning and international marketing.

- Increased Mattel share of retail shelf space 10%, through introduction of category management.
- Sold incremental \$10 million in Rite Aid stores by displacing private label with Mattel brands.

**THE COCA-COLA COMPANY, Atlanta, GA**

*World's largest beverage company with 50% share and \$21B in sales*

1982 - 1995

**DIRECTOR, WORLDWIDE (DISNEY/NBA) (1992 – 1995)**

Responsible for the negotiation and relationship management of The Walt Disney Company and The NBA

- Negotiated “no cash” deal with the NBA, and conceived use by Sprite to pass 7-Up as category leader.
- Increased European beverage volume 12% through Coca-Cola/Disneyland Paris promotion.
- Initiated first research to determine ROI from sports and entertainment sponsorships, leading to a change in Coca-Cola negotiating strategy, and a reduction in short and long-term costs.

**DIRECTOR, RETAIL MARKETING (1990 - 1992)**

Responsible for developing and selling trade marketing programs in all retail channels.

- Developed trade marketing strategy utilizing “pass through” rights to Coca-Cola sponsorships.
- Increased sales 35% in Domino's Pizza by leveraging Coca-Cola/NFL frequency program.
- Improved airline relationships by developing national pricing program and eliminating local variables.



**DIRECTOR, NATIONAL THEATER ACCOUNTS (1988 – 1990)**

Responsible for management of theater channel and relationship with Columbia Pictures subsidiary.

- Generated annual sales of \$7.5 million in United Artists by introducing self-serve concessions.
- Retained \$12 million in business by introducing Coca-Cola on-screen advertising as additional source of revenue for Loews, Carmike and AMC chains.
- Secured \$5 million in annual sales, converting Cinema World, Santikos, and Wehrenburg chains to Coca-Cola.

**THE COCA-COLA COMPANY, Atlanta, GA**  
**DIRECTOR, NATIONAL ACCOUNTS**

1982 - 1988

**YOUNG & RUBICAM, NEW YORK, NY**  
**MANAGEMENT SUPERVISOR, TIME, INC. ACCOUNT**

1980 - 1982

**CHASE BANK, NEW YORK, NY**  
**AVP, RETAIL ADVERTISING**

1974 - 1980

**EDUCATION**

B.B.A. - Marketing - Pace University, New York, New York



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- H. Checks should be made payable to The Caparis Group, LLC.

Mr. Peter Caparis



### **Materials Reviewed**

- Trial Declaration of Lawrence Ferrara
- UMG Recordings, Inc. Amended Notice of Opposition, dated May 25, 2007
- Gordy Berry, To Be Loved: The Music, The Magic, The Memories of Motown
- Mattel's Responses and Supplemental Responses to UMG Interrogatories
- Raymond Adler Deposition
- Jan Heininger Deposition
- UMG Licensee Declarations
- Trial Declaration of William Waddell
- Trial Declaration of Jerry Juste
- UMG/Motown marketing and advertising documents
- Examples of licensed Motown products
- Examples of Motown/UMG Recordings
- Singing Machine Company press release regarding Motown karaoke products, dated February 12, 2003
- Examples of "Motown Metal" products and packaging
- Marketing documents produced by Mattel
- Product and packaging documents produced by Mattel
- Miscellaneous press clips and articles
- Miscellaneous Internet research
- RIAA Platinum album statistics (from [www.riaa.com](http://www.riaa.com))
- Motown Historical Museum Website ([www.motownmuseum.org](http://www.motownmuseum.org))
- Michigan State Historical Preservation web page regarding Hitsville, U.S.A. (<http://www.mcgi.state.mi.us/hso/sites/15952.htm>)
- [www.hotwheels.com](http://www.hotwheels.com)



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**UMG RECORDINGS, INC. v. MATTEL, INC.  
OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT 2  
TO TRIAL DECLARATION  
OF PETER CAPARIS**



# BERRY GORDY TO BE LOVED

THE MUSIC, THE MAGIC,  
THE MEMORIES OF MOTOWN

AN AUTOBIOGRAPHY



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to my sisters Gwen and Anna,  
who think they own me—  
and they do

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Printed in the United States of America  
First Printing: October 1994  
10 9 8 7 6 5 4 3 2 1

Library of Congress Cataloging-in-Publication Data

Gordy, Berry.

To be loved : the music, the magic, the memories of Motown : an  
autobiography / Berry Gordy.

p. cm.

ISBN 0-446-51523-X

1. Gordy, Berry. 2. Sound recording executives and producers—  
United States—Biography. 3. Motown Record Corporation.

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ML429.G67A3 1994

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us record there in the middle of the night, when nobody else was using the studio. That gave me a chance to cut several songs at a lesser rate.

The record came out so great I decided to use it to launch another label. The Tamla name was commercial enough but had been more of a gimmick. Now I wanted something that meant more to me, something that would capture the feeling of my roots—my hometown.

Because of its thriving car industry, Detroit had long been known as the "Motor City." In tribute to what I had always felt was the down-home quality of warm, soulful country-hearted people I grew up around, I used "town" in place of "city." A contraction of "Motor Town" gave me the perfect name—Motown. I would later use that name to incorporate my company.

Now I had two labels. My original plan was to put out all the solo artists on the Tamla label and the groups on the new Motown label. Each label would have its own image and identity—solo artists versus groups. But this plan, like some others, turned out not to be practical.

After making test pressings of "Bad Girl," I found—once again—I could not afford to put it out myself. Too much money had gone into cutting songs and making the masters. My second attempt at going national had failed.

I took what little cash I had, bought a plane ticket, grabbed my best masters, and headed off to New York on what turned out to be a very fateful trip.

My sister Anna, always supportive, had driven me to the airport, but just as I was walking up the steps to board the plane, I heard my name. Turning around I saw her frantically running toward me, waving a newspaper.

"Wait a minute," she yelled, "don't get on that plane! Today and next Monday, bad days for Sagittarians to travel!"

*She's got to be kidding.*

Here I am, about to go on possibly the most important trip of my life and she has to come to me with something like this. *But what if she's right?*

I knew if I didn't go I would be dead anyway. So I smiled and waved her good-bye.

That flight was probably not much rougher than any other but every bump had me in constant panic, much more than usual. When we finally landed I was a wreck and decided that day that touching down in that airplane was the second best feeling I'd ever had.

My first stop in New York, naturally, was to be United Artists. Walking down Seventh Avenue near the UA building, I ran into some people from Detroit. I didn't even know them that well, but being alone in a strange town made anyone from home your instant friend. Before I knew it, I had invited them up to the company with me.

"Listen," I said, knowing how impressed they would be, "the executives at UA would be real hurt if they found out I was in town and hadn't given them first crack at my hot new product."

Most people in Detroit had heard that no matter how big you are, you hadn't really made it until you were big in New York. Well, I was big, and I couldn't wait to see their faces when they saw how big.

Once upstairs in the UA outer offices, however, there was no buzzing me in, no "Mr. Gordy this, Mr. Gordy that."

*This must be a new receptionist who doesn't know who I am.* Motioning for the others to have a seat in the lobby, I moved to her quickly. "I'm Berry Gordy, the producer for Marv Johnson."

No reaction.

"I produced 'Come To Me' and I'm—"

Before I could say anything more, I heard this nasal voice coming at me with "Could you spell that last name please?"

The knot in my stomach told me I was in trouble. "Gordy, G-O-R-D-Y," I said, glancing back at my friends sitting on the couch trying hard to act oblivious. I leaned forward to the young lady and whispered, "You're gonna be in real trouble if you don't call the Sales Department right now and let them know I'm here."

We locked eyes for a moment or so before she decided to make the call. While talking to someone, I saw her expression go from fear and concern to confidence and arrogance as she put the phone down. "I'm sorry, sir, they're all busy now. You'll just have to be patient. Why don't you have a seat, Mr. Gorney?"



**UMG RECORDINGS, INC. v. MATTEL, INC.  
OPPOSITION NO. 91176791**

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**EXHIBIT 3  
TO TRIAL DECLARATION  
OF PETER CAPARIS**



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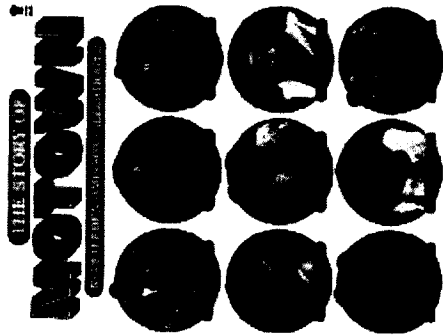
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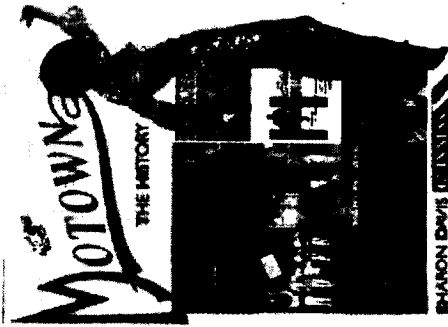
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**Publisher:** Guinness Superlatives Books; First edition (April 1989)  
**Language:** English  
**ISBN-10:** 0851128947  
**ISBN-13:** 978-0851128948  
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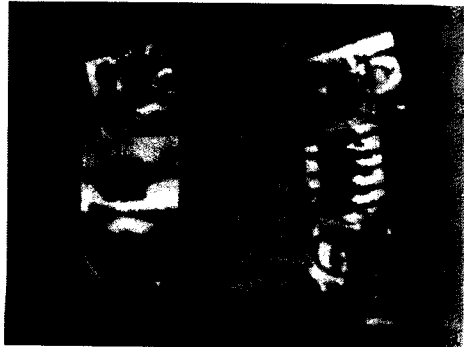
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### From Publishers Weekly

Although clear and concise, Motown adds little to what the public already knows about the record company that had hit after hit in the '60s. The familiar main events are covered in detail: Marvin Gaye leaving Motown because owner Berry Gordy allowed only one of his performers Smokey Robinson artistic control over recordings; the departure of the talented writing and producing trio of Holland, Dozier and Holland because of royalty disagreements; jealousy on the part of other Motown groups when Gordy concentrated on Diana Ross's career, even at the expense of her group, the Supremes. The trivialists of record release dates, television appearances, even marriages, births, deaths carries the book. Some rare publicity photographs are also included.

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### From Library Journal

Taraborrelli writes about Motown Records from its inception in the late 1950s to its present-day empire. After an introduction, he divides the book into five sections: each begins with a chronology of events at Motown and then includes sketches of such performers as Smokey Robinson, the Supremes, Marvin Gaye, Stevie Wonder, and the Jackson 5. Although gathering together many interesting photos, the author takes the uncritical perspective of a fan, characterizing the Motown sound as "the most exciting and absorbing popular music of the postwar epoch." Compared to other recent books on the subject, this book adds little to the understanding of the Motown phenomenon. Still, it will probably appeal to diehard fans. David Szatmary, Continuing Education, Univ. of Washington, Seattle

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### Product Details

**Paperback:** 213 pages

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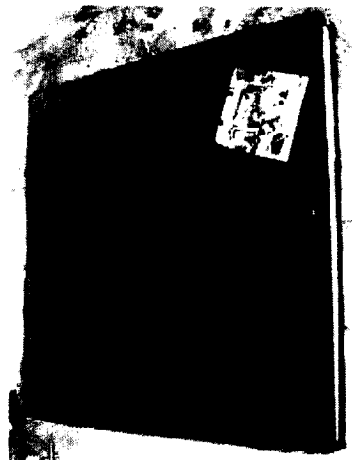
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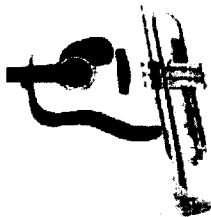
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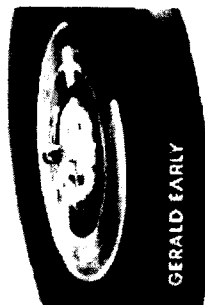
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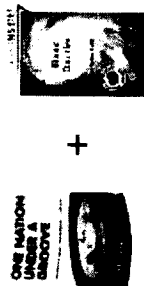
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## Editorial Reviews

### From Publishers Weekly

In this elegant, far-ranging essay, African American studies professor Early (The Culture of Bruising) offers a portrait of the revolutionary as a decidedly bourgeois family man and businessman-Motown Records founder Berry Gordy Jr., stage manager of "the most shining moment of the American black in popular culture." Borrowing crossover boxing hero Joe Louis's gloves and Booker T. Washington's bootstraps, Gordy combined black and American identities in a music "that neither bleached nor blackened," even if it was created,



produced and-most significantly-popularized entirely by blacks. Readers hoping for a complete history or a critical equivalent of The Big Chill soundtrack will be disappointed; Early is less interested in particular songs or artists than in the overarching, if never fully described, "Motown sound" authored by Gordy himself with the help of in-house songwriters and producers. (Artists were never permitted to write songs or produce, and even diva Diana Ross was never allowed to become more than just the most exalted member of the Motown "family.") This is a heady mix of cultural studies and nostalgia, only occasionally bogged down in a slight mist of academicism. Copyright 1995 Reed Business Information, Inc. --*This text refers to an out of print or unavailable edition of this title.*

#### **From Booklist**

Early has gained quite a reputation from his participation in the Ken Burns baseball documentary on PBS, winning the 1994 National Book Critic Circle Award for best work of criticism with *The Culture of Bruising*, a work on the brutal sport of boxing, and his frequent commentaries on National Public Radio. He continues his analysis of popular culture with this brief study of Motown, an African American record company that has had a tremendous influence on popular music. Smoky Robinson and the Miracles, Marvin Gaye, the Supremes, the Temptations, and so many other pop groups got their big chance with Motown, and their music is fairly pervasive in American culture. Early begins his commentary with the career of Frank Sinatra, skipping and bounding about with a profusion of insights before tackling the tremendous development of Motown. Although it takes a bit of reflection to draw together seemingly disparate points, the book offers a useful discussion of the origins of black rhythm and blues music and how Motown moved it into the mainstream and carved a wildly successful business out of that connection. *Bonnie Smothers --This text refers to an out of print or unavailable edition of this title.*

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**Paperback:** 248 pages

**Publisher:** University of Michigan Press/Regional; Rev Exp edition (March 25, 2004)

**Language:** English

**ISBN-10:** 0472089560

**ISBN-13:** 978-0472089567

**Product Dimensions:** 7.3 x 5 x 0.7 inches

**Shipping Weight:** 9.1 ounces (View shipping rates and policies)

**Average Customer Review:** (2 customer reviews)

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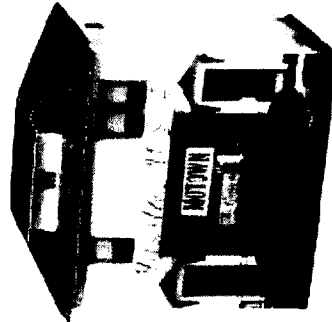
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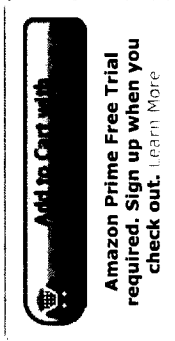
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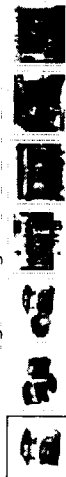
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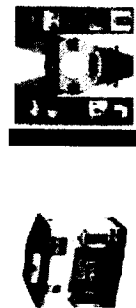
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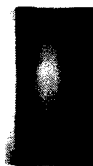
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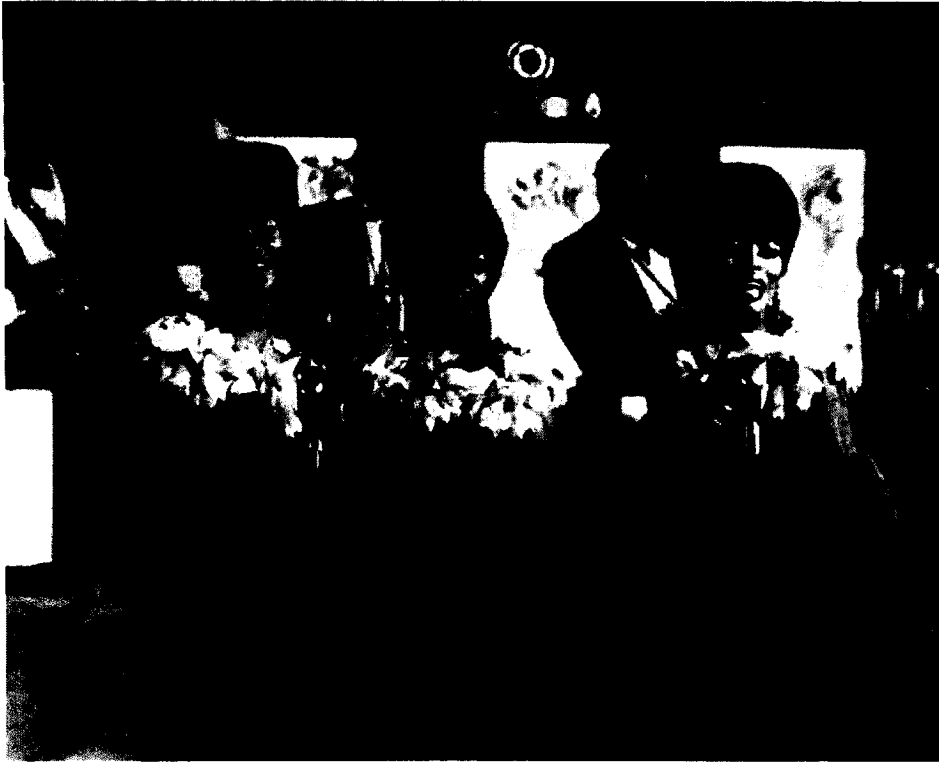
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# VANITY FAIR

## MUSIC



The Supremes—Florence Ballard, Mary Wilson, and Diana Ross—opening at the Copacabana in New York City, 1965. Courtesy of Motown Museum.

## It Happened in Hitsville

After half a century, and several shelves of books about the revolutionary music label, Motown's story is still obscured by rumors and misconceptions. Founder Berry Gordy Jr. joins a groundbreaking chorus—Smokey Robinson, Martha Reeves, Lionel Richie, Stevie Wonder, Suzanne de Passe, and other legends—to give an oral history of the Detroit hitmaking machine, the cultural and racial breakthroughs it inspired, and life at “Hitsville,” as well as a true account of Gordy's relationship with Diana Ross and the rise of the Supremes.

**BY LISA ROBINSON**  
**DECEMBER 2008**

*When I was 11 years old I was taking black newspapers into white neighborhoods to sell them, because I liked those newspapers, so I thought other people would like them, too. The first week I sold a lot of papers because I was cute. I took my brother the next week and didn't sell any. One black kid was cute. Two—a threat to the neighborhood. —Berry Gordy, July 9, 2008.*

*Callin' out around the world, are you ready for a brand new beat? —“Dancing in the Street,” Martha & the Vandellas.*

*Motown shaped the culture and did all the things that made the 1960s what they were. So if you don't understand Motown and the influence it had on a generation of black and white young people, then you can't understand the United States, you can't understand America. —Julian Bond, N.A.A.C.P. chairman of the board.*



**D**etroit, Michigan: the two-story building at 2648 West Grand Boulevard looks like an ordinary suburban house—except for the bright-blue HITSVILLE U.S.A. sign above the front porch. The first floor of this national landmark includes a reception area, a room filled with reel-to-reel tape machines and boxes of master tapes, old vending machines filled with candy and cigarettes, a glass-windowed control room, and a recording studio. Studio A, as it is known and preserved in this Motown Historical Museum, was, at the beginning of the 1960s, the room where the Supremes, the Temptations, Smokey Robinson & the Miracles, Marvin Gaye, Mary Wells, the Four Tops, Martha & the Vandellas, and Stevie Wonder, among others, recorded the hundreds of hits—"Reach Out I'll Be There," "Ain't Too Proud to Beg," "Heat Wave," "Nowhere to Run," "Uptight," "Bernadette," "The Tears of a Clown," "The Tracks of My Tears," "Shop Around," "Stop! In the Name of Love," "My Girl," "The Way You Do the Things You Do"—that changed the musical and racial essence of America.

More than 50 books have been written about Motown, its artists, and founder Berry Gordy Jr., including his 1994 autobiography (*To Be Loved*), in which he attempted to "set the record straight." And, still, rumors and misconceptions about Motown and Gordy's story persist. For 50 years now, Gordy, who started the company in 1958 with an \$800 loan from his family, has vigorously guarded the Motown legacy—living a private, some might say reclusive life on his enormous Bel Air estate (formerly owned by Red Skelton). A happy, loquacious man who surrounds himself with friends and family—eight children, two ex-wives (his first wife is deceased), 13 grandchildren, and two great-grandchildren—Gordy remained mostly silent even when he and some of his artists were angered by the Hollywood movie *Dreamgirls*. (Gordy states that DreamWorks co-founder David Geffen is "a friend of mine for 40 years and a man of his word," and Gordy "was satisfied when DreamWorks took out a full-page ad in the trades" apologizing for any implication that *Dreamgirls* was about Motown, and stating that the true Motown story has yet to be told.) But, according to Motown veterans and those who worked behind the scenes for the label (who still call Berry Gordy "The Chairman" or Mr. Gordy), including Gordy himself, the reality of Motown from 1958 to the end of the 1960s is different from the myth. And, as someone said to Berry Gordy, if the lion does not tell his story, the hunters will.

**B**orn in 1929, Berry Gordy Jr. has been described as *brilliant, charismatic, genius, mentor, gambler, philosopher, gangster, ladies' man, and father figure*. At the age of five, Berry, the seventh of eight children, took classical piano lessons from his uncle. As a teenager and then a young man, he worked in his father's plastering business, sold cookware, served in the Korean War, worked at the Lincoln Mercury assembly plant, and opened and closed an unsuccessful jazz record store. He tried to sell his songs (his very first song, "You Are You," was written for, and sent blindly to, "Doris Day, Hollywood," who years later told Berry she never received it) and, eventually, he wrote hits for Barrett Strong ("Money") and Jackie Wilson ("Lonely Teardrops").

In the 1950s, Detroit was jumping. Berry listened to Oscar Peterson and Charlie Parker and hung out in nightclubs like the 20 Grand and the Flame Show Bar, where his sister Gwen had the photo concession and he once met Billie Holiday. He was a somewhat successful featherweight boxer, and never forgot the joy in his neighborhood when Joe Louis beat Max Schmeling for the heavyweight championship of the world. "He was black like me," says Gordy. "I saw the faces of my mother and father and the people in the street, and later I thought, What can I do in my life to make people that happy?" He chose music over boxing ("Both got girls," he says) and ultimately would start Motown with the help of family members and Smokey Robinson, a young singer-songwriter he met by chance at an audition and who would help put the label on the national map with the No. 1 R&B hit "Shop Around." For three decades, Motown was, at first, the *only major*, then the most important, black-owned music company in a business dominated by white-owned record and distribution companies, and, with more than 100 Top 10 hits in its 1960s heyday, it would revolutionize American

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Go behind the scenes with photos and video from our Motown shoot, then view the Motown portfolio. Above, the Four Tops. Courtesy of Motown Museum.



popular music.

Berry Gordy felt that the differences in people were way less powerful than their similarities. "When I started in music," he says, "it was for the cops and robbers, the rich and poor, the black and white, the Jews and the Gentiles. When I went to the white radio stations to get records played, they would laugh at me. They thought I was trying to bring black music to white people, to 'cross over,' and I said, 'Wait a minute—it's not really black music. It's music by black stars.' I refused to be categorized. They called my music all kinds of stuff: rhythm and blues, soul.... And I said, 'Look, my music is pop. Pop means popular. If you sell a million records, you're popular.'" The slogan of Motown became "the sound of young America," but, for Gordy, the sound was "rats, roaches, soul, guts, and love."

*The genius of Berry Gordy was that he perceived a vacuum in the musical culture of the nation and he was able to convince young brothers and sisters like me in the black side of town that this was my music, and at the same time convince white brothers and sisters on the other side of town who were listening to the Beach Boys that Motown was also their music.* —Dr. Cornel West, Princeton University.

**Berry Gordy:** I've been protecting the [Motown] legacy for 50 years. This music is the soundtrack of people's lives, and for people all around the world who love this music, who had kids with this music, who were part of making this music, it is my responsibility to not let these people down. I would never let Marvin Gaye's memory down. But I knew something would come along—like *Dreamgirls*—which was the result of so many other stories, and people making up stories, that would try and change the history. And after a while, the truth was so obscure. I decided now that it's the 50th anniversary it's time to tell the truth and then put it to bed.

**Smokey Robinson, lead singer of the Miracles, producer, songwriter, original vice president of**

**Motown:** I protested *Dreamgirls* to the hilt. They're not going to talk about Berry like that. They're not going to downplay Motown. They're not going to take our legacy and make it something negative [for] kids who didn't grow up with Motown. To make people think this is Motown and make Berry a gangster, no, they're not going to get away with that shit.

**Martha Reeves, lead singer of Martha & the Vandellas ("Heat Wave," "Nowhere to Run," "Dancing in the Street"), currently a member of the Detroit City Council:** I thought *Dreamgirls* was a good story, but it had nothing to do with Motown. Motown was more of a nightmare in that we played horrible places on the chitlin circuit, not that dreamland they show in that movie. We played some places that had horse stables in the back with straw on the floor, places where you had to put fire in the wastebasket to keep warm. At the Apollo Theater, when it was raggedy and dingy and dark, before it was renovated, we were in there cooking hot dogs on the lightbulbs. We would eat popcorn and sardines, and drink a lot of water to try to feel full.

**Berry Gordy:** When *Dreamgirls* was on Broadway, I didn't know about it or care much about it—I never saw it. I think the main person they were attacking on that was Diana [Ross], but when they came out with the film, a whole lot of stuff was changed. It was all based on Motown and based on me. I was the central character; it was all untrue. There were no redeeming factors for [the person based on me]—how can you relate that to somebody who has built all these superstars?



The Temptations (in mirror, left to right, Paul Williams, Melvin Franklin, Otis Williams, David Ruffin, and Eddie Kendricks) prepare for the *Gettin' Ready* cover shoot, 1966. By Frank Dandridge/courtesy of Motown Museum.



*Motown was not a normal company. P. Diddy told me he wouldn't have been able to do what he's done had it not been for us. But most of them think that I was a gangster, and I have to tell them, "You're on the wrong track." People in gangsta rap come up to me and say, "They got Gotti, but they couldn't get you," and I say, "Wait a minute—if you think that's how Motown was built, you're wrong, because the principles have to be totally different." The Motown legacy is there to show them—there is another way. —Berry Gordy, May 15, 2008.*

**Eddie Holland, lyricist of the hitmaking trio Holland-Dozier-Holland, who wrote and produced hundreds of hits for Motown:** All of [the owners of] these record companies, especially the independent companies, were buying songs and putting their names on songs that they didn't write. Berry Gordy did not put his name on songs he did not write. Berry Gordy never did that, would have never done that—it is not in his DNA. His character is much stronger and much more quality than that. It would have been impossible for Motown to develop if Berry Gordy was not an upright kind of a person.

**Smokey Robinson:** One of the reasons Berry started Motown was because [the distributors] didn't pay you [for record sales] in those days, especially if you were fledgling. We started Motown so everybody could get paid. And everybody was paid. The beautiful, wonderful, magnificent, incredible thing about Motown was that we began to bombard them with hits. The same distributors who hadn't paid at first would pay us in advance just to get our records. The disc jockeys would call us and say, "Could we please have the record first?"

**Berry Gordy:** I did not believe in payola for Motown when people were fighting for my records. Once a disc jockey played "Shop Around," the phones lit up; that's how potent it was.

**Lionel Richie, lead singer of the Motown group the Commodores and multi-platinum solo recording artist:** In the creative world there were a lot of [black] singers. There weren't a lot of [black] owners. This guy owned the company. Imagine, this is not happening in the 90s. This is happening during the civil-rights movement, during the 1960s—not exactly the greatest land of opportunity for a black businessman. To be a [black] businessman in America then, here's political correctness: "Yes, sir, no, sir. Yes, ma'am, no, ma'am." So here's somebody who's saying, "Go to hell." This man took no shit.

**Berry Gordy:** I never talked to the Mafia, but the rumor was so strong that I was a part of the Mafia that one time the F.B.I. called me down to their office. So when they called me down to the F.B.I. in Detroit, to the division that handles organized crime, well, who wouldn't be scared? I was concerned, although I knew I wasn't [involved in] organized crime unless I was being framed, which wasn't out of the question. They asked me if I was in the Mafia, and I said no. Then they took me to a board and showed me pictures and charts of the Detroit Mafia families. They said, "We've been studying you for years, and we cannot find you in any of these charts or families." And they said either I was the smartest person they knew or I had no ties to the Mafia.

**Stevie Wonder, singer, songwriter, producer:** Because Berry Gordy owned the company, it was not "tore up from the floor up." It was something he built. It was not something that somebody else had and passed on to him; it was his and his family's and all the people who were part of it who built this thing. That alone gives us a sense of pride.

**Smokey Robinson:** Way before we started Motown, Berry said, "I'm going to work with you and your group," and he just turned my whole life around. I played him about 20 of my songs, and he critiqued every song. He told me the songs made no sense because I was talking about five different things in one song; the first verse had nothing to do with the second verse, and the second verse had nothing to do with the bridge. He told me a song has got to be a short book, a small movie, or a short story. He taught me how to structure my songs.

**Berry Gordy:** At Motown, I hired a white salesman to go to the South. I didn't have pictures of black artists on the record covers until they became big hits. The Isleys had a cover with two white people on the cover. Smokey's *Mickey's Monkey* had a monkey on the cover. No one knew or cared; they thought it was brilliant.

**Stevie Wonder:** The competition at Motown was not the competition that said, "I don't like you." It was more like the



Brill Building: it was a challenge to come up with great music, great songs, and to me that was cool. I love Berry to pieces—Berry Gordy was, for my life, a blessing.

**Abdul “Duke” Fakir, sole survivor of the original Four Tops (“Reach Out I’ll Be There,” “Bernadette,” “I Can’t Help Myself (Sugar Pie Honey Bunch)”):** First thing I did [after our hit] “Baby, I Need Your Loving,” I went to Berry for the advance, because my mama was working as a domestic, and I said I need an advance really bad. Berry said, “What do you need? What for?” I said, “I want to buy my mom a house—she needs it bad.” He said, “How much do you think you need?” I said, “Oh, about \$10,000.” He said, “Well, here’s \$15,000.” That was the happiest weekend of my life. Bought my mom that house, bought me a Cadillac—powder blue and white.

**Otis Williams, sole survivor of the original Temptations (“My Girl,” “Ain’t Too Proud to Beg,” “Cloud Nine”):** For the longest time, it was that kind of camaraderie, that kind of family vibe. And old Pop Gordy [Berry’s father] would be there, and he would advise us; when I bought my first home, Pop Gordy came out to my house to make sure I had copper pipes.

**Suzanne De Passe, former creative assistant to Berry Gordy, Oscar nominee for screenplay for Lady Sings the Blues, Emmy winner for Motown 25:** I was booking bands for the Cheetah nightclub, in New York, and when I told Mr. Gordy that I could never get anyone at Motown to call me back, he said maybe they needed to hire me. They flew me to Detroit, first class, on a seven a.m. flight. I was wearing my little Bonwit Teller suit, had an overnight bag, was picked up at the airport by [Berry Gordy’s] driver in a maroon Fleetwood Cadillac. Then they drove me to Hitsville, and I was horrified; my expectation was that it would be a more opulent, grand building.

**Shelly Berger, ran the Los Angeles office of Motown, managed the Supremes and the Temptations:** My first trip to Detroit, I wasn’t too crazy about the hotel they put me in—the Lee Plaza. I walked in and said, Are they kidding? They’re trying to impress somebody? They rang me, like November of 1965, and of course the deal [to run the L.A. office] wasn’t made until June of 1966, which is typical of Motown. This is really Motown’s 10th anniversary; it’s just taken us 40 years to celebrate it.

*At Hitsville, every Friday morning Berry Gordy would hold a “quality control” meeting for the staff to vote on what records to put out. If you were one minute late, you did not get in. Once even Smokey Robinson was locked out.*

**Berry Gordy:** Motown artists were always punctual. Mostly. Well ... not Stevie Wonder.

**Suzanne De Passe:** I worked there from 1968 until I left, in 1991. And once you work for [Berry Gordy], you never *don’t* work for him. I think everybody who ever worked for him, even if they don’t still, if they get a call and they can, they’ll be there for him. It’s the pull of his personality and it’s definitely love. As corny as it sounds, that whole family thing is real.

**Smokey Robinson:** In those early days of Motown, people were outside, lined up for auditions. Like *American Idol*. Berry is a genius and he’s a very charismatic person, always was. And you can see if you follow his lead, most of the time you’re going to come out on top.

**Shelly Berger:** You cannot categorize Berry Gordy. Berry Gordy is a leader. Berry Gordy is John Kennedy, Bill Clinton; Berry Gordy can get people to follow him. Motown was like a 1950s MGM musical. Berry Gordy would say, My cousin has a barn—let’s put on a musical. And everybody would follow. He’s got charisma to burn. When Berry Gordy wants to get you, you are got. I don’t care if you come in with a white hood on, you are *got*.





The Motortown Revue comes to the Apollo, 1962. Courtesy of Motown Museum.

**Duke Fakir:** When you signed with Motown, you became part of that family. You're young and you're dreaming. We were friends; we played basketball together, we played cards together, we ate together. It wasn't like, if I got a hit, somebody else ain't going to get one. Because one after the other, you kept getting hits, and more hits. It just became a wonderful place to make music. There were always sessions going on, 24-7. And the bar just kept getting raised—higher and higher.

**Lamont Dozier, along with Eddie and Brian Holland, part of the hitmaking trio Holland-Dozier-Holland:** The atmosphere at Motown in the early days was very family-oriented, with the picnics, the company song, the games. But then the competition became fierce, and to stay on top, you had to be on top of your craft.

**Suzanne De Passe:** There was a great deal of recognition and pride that this music was holding its own against the British Invasion. If you look at the charts when the Beatles were out, the Supremes were right up there. The Four Tops were up there.

**Stevie Wonder:** I was very excited about being at Motown, being with all those different artists. Martha Reeves was like my big sister.

**Smokey Robinson:** Berry always made a point of telling us we had to pay our taxes. People think the love at Motown was a myth. People say it could not possibly have been that, and that is exactly what it was, and exactly what it is. When Motown people see each other, there is love in the room.

**Berry Gordy:** People used to attack me and say it was a conflict of interest: I was the manager, I was the record company, I was the publisher, and I would say, Yes, of course, conflict of interest, but it's in *their* favor, you stupid fuck.

*Motown taught the artists how to deliver a song in the recording studio and trained them for the stage. The house band—the Funk Brothers—had the extraordinary bassist James Jamerson and drummer Benny Benjamin. Famed choreographer Cholly Atkins was hired to teach dance steps, bandleader Maurice King was the tour conductor, and former actress and modeling-school owner Maxine Powell groomed the acts and showed them how to conduct themselves on- and offstage.*

**Martha Reeves:** None of us was perfect or professional when we first arrived. I was a little boisterous. I might have had a habit of profanity. Maxine Powell had a charm school, and what she came to Motown to teach was self-worth, body



language, how you should be at all times photographable.

**Maxine Powell, head of the (now closed) Maxine Powell**

**Finishing and Modeling School:** Most of the artists were rude and crude and speaking the street language when I met them. Diana Ross and the Supremes thought they knew what direction they wanted to go in. They said they were sophisticated when they got to Motown, but that was not true; sophistication takes years, and young people are not sophisticated. The Supremes were acting snooty, especially Diana Ross. I taught her [about] being gracious and classy, because classy will turn the heads of kings and queens.

**Smokey Robinson:** I don't care who you were or who you became, two days a week you had artist development. Marvin Gaye, me, the Supremes, the Temptations.

**Duke Fakir:** Everyone was scheduled to go to those classes; we were scheduled about three times a week. But they used to call us rebels—we probably went six times in two or three years.

**Maxine Powell:** I told them they had to be trained to appear in the No. 1 places around the country and even before the Queen of England and the president of the United States. Those youngsters looked at me and said, That woman is crazy: all I want is a hit record.

*It was December 27, 1964. I was 10 years old, and I tuned in to watch The Ed Sullivan Show.... It was a moment that changed my life.* —Oprah Winfrey, on seeing the Supremes on TV.

*Diane Ross (later Diana), Florence Ballard, and Mary Wilson were three teenagers from Detroit's Brewster Projects in a group called the Primettes, who sang backup for the Temptations. They hung around Motown, eventually got signed, were supported by the label for four years before they had a hit, and became Motown's most commercially successful and biggest international act with No. 1 singles such as "Baby Love," "You Can't Hurry Love," "Stop! In the Name of Love," and "Back in My Arms Again." When Florence Ballard's drinking caused problems within the group, she was replaced by Cindy Birdsong, and in time, Diana Ross went solo. And while it may not have been public, it was common knowledge within the Motown family that Diana and Berry were lovers (and that he was the father of Rhonda, one of Diana's three daughters).*

**Berry Gordy:** Diana Ross was just as cute as she could be. We gave her a job for the summer, and everybody loved her in the company—she was the sweetheart of Motown. She was just so innocent. Ed Sullivan loved her. She was the personality of the group—the big eyes and all. And she was incredible with her showmanship; she was the magic in the group.

**Smokey Robinson:** There were so many talented kids in our neighborhood: Diana lived four doors down from me; Aretha Franklin lived around the corner—I've known her since I'm six years old. The Temptations lived across the avenue. Diana and I dated for a while ... long before she got with Berry.... I love her. I know her since she was 10 or 11, so she doesn't diva me. We love each other.

**Stevie Wonder:** I loved Diana Ross's voice. And I had a crush on her; when I came to Motown, she walked me around the building and showed me different things—she was wonderful.

**Martha Reeves:** I love Ross. That's what I call her—Ross. When I first got to Hitsville, [the Supremes] weren't old enough to get in clubs, and sometimes we'd slip her in; I'd pick her up in my car. I sort of took her under my wing.

**Suzanne De Passe:** Once I was with Cindy Birdsong at the Essex House in New York and the elevator stopped and the doors opened, and there, in a Pucci dress, holding her Maltese puppy, with a Sassoon wig and shoes covered in the same



Berry Gordy and Diana Ross in Las Vegas, circa 1966. By Robert Gordy Jr./courtesy of Motown Museum.



material as the Pucci dress, was the breathtaking Diana Ross—more glamorous than any human thing I'd ever seen in my life. And I stood on the sidewalk and watched Diana get into her own limousine and watched Cindy and Mary get into their limousine together and off they went. I stood there like the poor little match girl, thinking, one day ...

**Berry Gordy:** It's very clear why I fell in love with Diana—because she was my star, and she came from the bottom up. With her it was not only fun, it was just like heaven working with her because she would surpass anything ... and she always kept her self-esteem. She always told me, "If you think it, I can do it." And she did.

**Lamont Dozier:** We were working for the Marvelettes until that fateful day when [Marvette] Gladys Horton did not want to record "Where Did Our Love Go." I gave the track to the "no-hit Supremes," who did record the song, which turned out to be the first No. 1 out of 12 No. 1s for the group.

**Eddie Holland:** After "Where Did Our Love Go" became a hit, [the director of sales] said we have to keep these girls hot. They're the flagship of this company, because they're spreading over to such a wide audience.

**Smokey Robinson:** Diana Ross was the most hardworking, most diligent student at artist development. Everybody else would be gone and she would still be there. Diana Ross wanted to be ... Diana Ross.

**Shelly Berger:** The bigger [the Supremes] got, the more difficult it was for Florence. She was drunk; she was missing shows; she was detrimental to the group.

**Berry Gordy:** It just came time when it was best for them to split up. I don't really remember my part in that—I was always objective. The fact that I went with Diana Ross—she never took advantage of that and I never gave her an advantage. She didn't want any favors; she wanted to do what was right. If she got more attention at Motown, it was because she was good; it was all about the work. That's why we broke up. We always said [we would] if [the relationship] came in the way of her work. I knew she wanted to be a superstar.

*Segregation, determination, demonstration, integration, aggravation, humiliation, obligation to our nation—ball of confusion ... that's what the world is today.* —"Ball of Confusion," the Temptations.

**T**o some in the turbulent 1960s, Motown was, as Otis Williams says, "a soothing ointment to a troubled soul." To others, it was seductive pop music—more sophisticated and accessible to a white audience than the raw, gritty sounds of Stax Records or James Brown. It was infiltration; the hits were all over the radio, and the stars were on The Ed Sullivan Show and at the Copacabana. The Beatles covered the Berry Gordy compositions "Money" and "Do You Love Me." And the Motortown Revue (the Temptations, Martha & the Vandellas, Smokey Robinson & the Miracles, the Supremes, the Four Tops) got on a bus and set off across America, into a still-segregated South, where they encountered racial unrest, protest marches, and violence. When the Temptations first performed in some southern states in the mid-1960s, a rope down the middle of the audience separated blacks from whites; by the time the Temptations returned in 1968—five years after Dr. Martin Luther King Jr. recorded his "I Have a Dream" speech for Motown's Black Forum label—that rope was gone.



Berry Gordy and Stevie Wonder listen to a tape. By Joe Flowers/courtesy of Motown Museum; digital colorization by Lorna Clark.



**Berry Gordy:** For black people, bigotry was a fact of life. We grew up with that—that's why Diana and I started calling each other "Black." No one wanted to be called black at that time—"black" was considered a negative word in the 60s among the people we knew. This was before black was beautiful. People said "Negro." But I said, "A word is a word, and I want 'black' to mean love." Diana called me "Black" and I called her "Black." We wanted people to be proud of being black.

**Stevie Wonder:** I was eager when I was told that I'd go out on tour, but the excitement was sort of cut short by the fact that there was a performance in Alabama and the [groups] were on the bus—can't remember who it was—and I heard that [someone] shot at the bus. It scared me. It was a scary situation.

**Martha Reeves:** I had a shotgun put in my face. I was trying to get off the bus to use the restroom. He was right there with the gun, saying, "Don't another one of you niggers get off that bus." We said, "We want to use the restroom." And he said, "You better get out of here." One of the guys said, "I'm Bobby Rogers of the Miracles. Don't you know about the Miracles?" And he says, "Get back on that bus," called the sheriff, says, "These niggers are trying to take over my filling station." He didn't know we were down there to make music, not war. He thought, because there's a bunch of black people on the bus, we were Freedom Riders.

**Otis Williams:** We went to places in the South where they would tell us, "We don't serve niggers. You can't eat here, can't use the bathroom." We'd have to go back out, get on the bus, the bus would have to go down the road and everybody had to go out into the bushes. The Four Tops and us had to watch each other; when the Tops was on, the Temps would stand on the side of the stage with bats or whatever. I didn't take guns with me, but some of the Tops did.

**Martha Reeves:** We took our baths and showers mostly in Greyhound bus stations and train stations. That's how we kept clean. But [later on] when we got to the venues and we started singing, people would change, attitudes would change. Once we got in there and sang the music, people would turn into warm human beings, as opposed to people putting the dogs on you and chasing you around with billy clubs.

**Shelly Berger:** After I started managing the Temptations, when they toured in the South, I had a clause in our contract that if the audience was not integrated we didn't have to play and we had to get paid.

**Martha Reeves:** There was a time when guards stood in front of the stages with clubs, and whether it was a white person or a black person, if they got up to intermingle in the audience, they'd club them. Then Smokey Robinson, who would open the show, said, "Wait a minute—I want you guards to stand back. This is good music, it's dance music, and people are going to get excited, but they're not going to fight or cause any harm to one another. So don't hit another person with those sticks." He stood up for us, and I love him forever for that.

**Smokey Robinson:** In Detroit you could not go into the white areas unless you proved you worked for somebody. But the kids in those areas would write us letters: "We've got your music, we love your music, we're so glad you're making music, but our parents don't know we have it, because they'd make us get rid of it." A year or so down the line, we're getting letters from the parents: "Our kids turned us on to your music. We're so glad you're in business; your music is so uplifting."

**Edna Anderson-Owens, Berry Gordy's administrative assistant in 1972, currently co-C.E.O. of the Gordy Company:** I had come out of the civil-rights movement, had come from the South. I never thought of [Motown] as just being a record company, even as an entertainment company. It was more than an entertainment company. In a sense it replaced the civil-rights movement for me; it became another movement. It became more of a cause.

**I**n 1967, Holland-Dozier-Holland wanted to leave Motown for another label a year before their contract was up. Berry Gordy sued the trio for \$4 million. HDH countersued for \$22 million. The nasty lawsuits and countersuits went on for more than 30 years before they ended, in 2004.

**Berry Gordy:** I love these guys and they love me, but they obviously wanted to get away so bad and do their thing. All



my people said, "Just give them a few thousand dollars and the case is over." My legal fees were astronomical, but I said, "No, I cannot settle this for anything"—it [would] mean they were right.

**Eddie Holland:** Berry Gordy was paying artists, producers, and writers when most companies, including the majors, were not doing so. We were making more money than our peers were making. By far. But [later], you get lawyers involved, and it took on a life of its own.

**Berry Gordy:** Harold Noveck was my tax attorney, and his brother Sidney was my accountant. Anytime we got in any trouble we didn't worry about anything, because [the Novecks] would spend a thousand dollars to find a penny. The books had to balance, all the time. So whenever I would sue somebody or someone would say the artist didn't get paid, I'd say, "Hey, you're barking up the wrong tree." In order to protect the legacy, if somebody would tell an outright lie, I would sue them and I would always win, because the truth will win if you can afford to fight for it.

**Shelly Berger:** I used to refer to the Noveck brothers as the *Malach Hamovis*—that's Yiddish for the Angels of Death. They were very, very conservative. Since Motown's fiscal year was on the calendar year, December 31 was the end of the fiscal year, and each year I'd book the Supremes in some great place where we could all go for Christmas and New Year's and bring our families—whether it was Tahoe or Miami. Then the Noveck brothers would show up on December 26 to tell Berry Gordy, "You're going to lose everything and you're insolvent." So ... for four days we're living in absolute misery, because the *Malach Hamovis* had come.

**Lamont Dozier:** The lawsuit was just our way of taking care of business that needed to be taken care of—just like Berry had to take care of his business which resulted in the lawsuit. Business is business, love is love.

**Eddie Holland:** Think in terms of a family member that you have a disagreement with. It was a molehill turning into a mountain. He's a fighter, I'm a fighter, and so, through the lawyers, we fought for many, many years, and he wouldn't bend and I wouldn't bend. That's what happens when you get two bulls locking horns. But the love never left.

*Brother, brother ... there's far too many of you dying.* —"What's Going On," Marvin Gaye.

**M**arvin Gaye started out at Motown as a drummer who wanted to sing Sinatra-style ballads. Ultimately, he had R&B-styled and pop hits and became Motown's sex symbol.

**Berry Gordy:** Marvin had a divided soul. He looked upon me as a father figure and friend, but he wanted to have his own independence, and he would disagree with you all the time just for the sake of disagreeing. At the same time, he was a pure, wonderful, spiritual person who was looking for truth, honesty, and love. But I had major fights with Marvin Gaye because he did not think it was legal to have to pay taxes. He was convinced that it was not lawful, and I said, "Well, I don't want to debate that with you, Marvin, but I do know if you don't pay your taxes, you're going to jail."

**Eddie Holland:** Marvin was quick, easy to work with. He had a magnificent ear. He had a magnificent talent. He was the only artist I've ever worked with in my life that could hear me sing the song one time and say, "O.K., give it here."

**Berry Gordy:** I heard the album [*What's Going On*], and I thought it was really meaningful, but he was a pop singer, and I told him, "Marvin, think about your great image that you built up: do you really want to talk about police brutality?" I could see he had pain and passion and he wanted to awaken the minds of men. He said, "B.G., you gotta let me do this," and I was really hesitant. Not for me, but for him. I didn't want his career to be gone. I said, "O.K., Marvin, but if it doesn't work, you'll learn something, and if it does work, I'll learn something." So I learned something.

*ABC—easy as 1-2-3.* —"ABC," the Jackson 5.

**T**he Jackson 5 were five brothers—Jackie, Jermaine, Tito, Marlon, and lead singer Michael, who was nine years old at the time—from Gary, Indiana, who had been seen at the Apollo Amateur Night in New York City by Motown musician Bobby Taylor [of the Vancouvers] and drove with their father, Joe Jackson, to Detroit to try to get



*an audition with Berry Gordy.*

**Suzanne De Passe:** I was in my apartment at 1300 East Lafayette Street in Detroit—where many of the Motown artists lived—and Bobby Taylor called up and asked me to come down to his apartment, he wanted me to see something. I said no; I wasn't about to go to a man's apartment. But he said, "Come on," so I did, and he opened the door and there were all these kids sort of strewn across his living room. He clapped his hands and went, "O.K., everybody, this is Suzanne de Passe and she works for Berry Gordy and you need to sing for her because she can get you the audition." They sang and I was blown away. So the next day I told Mr. Gordy on the phone what I'd seen. And I said, "I think you should sign them. These kids—" And he said, "Kids? I don't want any kids. You know how much trouble it is with Stevie Wonder and the teachers, and when you're a minor you have to have a special chaperone, and court approval of the contract, and it is a *problem*." So he said no. I had to really muster up all my courage to go back to him and say, "Really, I don't think you can afford not to see these kids." Finally he agreed to see them.

**Lionel Richie:** Suzanne's assignment was to take this new group called the Jackson 5 out on tour, and she was looking for an opening act. They set up an audition at Lloyd Price's Turntable, and she came in and basically saw the Commodores play. I was the novelty singer—I only did two songs: "Wichita Lineman" and "Little Green Apples." We got the gig, but what helped us tremendously was they allowed us to be in the room with them while Suzanne was briefing them on how to deliver their stage show; it was the education of life. She had to teach them how to put their place settings on the table so when they ate with royalty they would know how to do the silverware. You got the etiquette course while you got the singing and dancing. What I learned most was whatever you do, if you sing, dance, juggle, whatever it is, you do it in the first song. Because they may not stick around for the second one.

**Suzanne De Passe:** The extraordinary part for me was to be a witness to the incredible impact that the Jackson 5 had on the public and the public had on them. When we started out we could go everywhere—we could go shopping, we could go get hamburgers, we could go to rehearsal. And within a very short time we were mobbed and could go nowhere.

**Lionel Richie:** This little kid [Michael] did everything in the first song. I kept waiting for Suzanne to tell me what the real secret was, that Michael was a midget, because it couldn't be anything else. Then I realized, That's a real 12-year-old kid. I would watch him play with water balloons backstage, anything that kids do, and then he'd walk onstage and turn into this full-grown entertaining monster.

**Suzanne De Passe:** I had no mechanism to measure the magnitude of what I was doing. I was killing myself working, but I was responsible for everything with the Jackson 5—except the records—for what was to become one of the most seminal groups to influence young black kids ever.

**Smokey Robinson:** I've known Michael since he was 10 or 11. He is the best who ever did it. The singing and the dancing and the records—the whole package. But somewhere ... he just got lost. It's easy to do.

**B**y the end of the 1960s, Berry Gordy felt he'd done everything he could do in Detroit, and with an eye toward movies and television, he relocated Motown to Los Angeles. Some—Suzanne, Smokey, Diana, Stevie—followed him. Others, back in Detroit, felt betrayed. Acts eventually left for other labels, among them Marvin, the Jacksons, and, after starring in the Gordy-produced, five-time-Oscar-nominated *Lady Sings the Blues* and the Gordy-directed *Mahogany*, Diana Ross. New artists joined the label, but it was never the same, and by 1988, Berry Gordy was tapped out financially and drained emotionally. Told by the Noveck brothers that he was insolvent, millions of dollars in debt, he sold the Motown name, record catalogue, master recordings, and artists' contracts to MCA Records for \$61 million.

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Go behind the scenes with photos and video from our Motown shoot, then view the Motown portfolio. Above, the Four Tops. Courtesy of Motown Museum.



*(Five years later, Polygram bought it from MCA for \$325 million.) In 1997, Gordy sold one-half of his Jobete publishing company to EMI for \$132 million, and in 2003 and 2004 he sold the other half to EMI for a total of \$188 million. After initial reluctance, Stevie Wonder, who had a clause in his contract that gave him the right to approve or block any sale of Motown, finally gave Gordy his blessing but, to this day, is a recording artist on the Motown label, now a part of the Universal Music Group*

**Stevie Wonder:** We just had to work [the business] out, but I stayed at Motown because, more than any other company, they gave me my freedom. Because they knew me, and Berry loved me and I loved him.

**Edna Anderson-Owens:** The Motown music spoke to every walk of life. Motown was colorless. And the whole Motown thing was not heavy-handed or hard-hitting—it was very subtle, because you were seeing people in beautiful gowns with beautiful behavior. It was another kind of thing that came through. Anytime there's somebody successful and representing you well, you're proud.

**Smokey Robinson:** When I saw that Motown was beating Berry up and beating him down, and he was getting these calls from the black leaders telling him not to sell—"It's our heritage"—well, he's my best friend, fuck Motown. I went to him and told him to sell this sucker and go buy your island. An island with a moat. And surround your island with warriors. And dare somebody to call you and even ask you about a record.

**Stevie Wonder:** Motown brought people together; it had this infectious kind of music, and before you knew it you were clapping along to it and rocking to it, and the songs were all positive. Even if you had a love song, there was something to learn from it.

**Berry Gordy:** Motown educated people through song. You have no control over your emotions when you hear a song—it makes you dance, makes you sing, makes you happy, sad. We just wanted to do music for the world. Motown is a magical something that has never been seen before and will never be seen again. Because the world has changed for the worse. And to have a company like that is probably impossible now. It was too simple to be believed.

**Edna Anderson-Owens:** I wanted [Motown] to be respected throughout the world for what it is. I'm very proud to say I've been involved with this. It's like I had an opportunity to walk with Dr. King; it has such great meaning throughout the world. It ultimately satisfied my quest for being a proud black person.

**Martha Reeves:** You can't really have a good house party unless you play some Motown.

**Lisa Robinson** is a *Vanity Fair* contributing editor and music writer.



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September 5, 2009

## Motown Turns 50, but the Party's Far From Over

By THE ASSOCIATED PRESS

Filed at 12:04 a.m. ET

DETROIT (AP) -- On Jan. 12, 1959, Elvis Presley was in the Army. The Beatles were a little-known group called The Quarrymen casting about for gigs in Liverpool. The nascent rock 'n' roll world was a few weeks away from "the day the music died" -- when a single-engine plane crash claimed the lives of Buddy Holly, J.P. "The Big Bopper" Richardson and Ritchie Valens.

It's also the day a 29-year-old boxer, assembly line worker and songwriter named Berry Gordy Jr. used an \$800 family loan to start a record company in Detroit.

Fifty years later, Motown Records Corp. and its stable of largely African-American artists have become synonymous with the musical, social and cultural fabric of America. The company spawned household names, signature grooves and anthems for the boulevard and bedroom alike that transcended geography and race.

And time.

Motown may be 50 years old, but it isn't any less relevant with current hitmakers -- from Taylor Swift to Coldplay -- citing the label's signature "sound" as an influence.

Would there be a Beyonce or Mariah Carey had Diana Ross, Martha Reeves and Gladys Knight not come first?

How about Kanye West and Justin Timberlake? What would have become of their musical careers had Motown not blazed a trail with the likes of Michael Jackson, Smokey Robinson, Marvin Gaye, Stevie Wonder, The Temptations and The Four Tops?

"There were just so many amazing artists that came through. It was such a surge," said singer-songwriter Jewel, whose recently released collection of original lullabies includes Motown influences. "And it really informed The Beatles' melodies. So much of what pop music and popular culture became. I recommend everybody go back and look at those melodies and see where they find them today, because they're resurfacing and being remixed, basically, into new pop songs."

Exhibit 5

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From its founding in 1959 to a much-debated move to Los Angeles 13 years later, what has become known as "classic Motown" created a once-in-a-lifetime sound that was local and global, black and white, gritty and gorgeous, commercial and creative, Saturday night and Sunday morning.

"I Heard it Through the Grapevine." "My Girl." "The Tears of a Clown."

Like the two-sided singles the Motown factory churned out 24 hours a day, seven days a week at Studio A inside the Hitsville, U.S.A., building at 2648 West Grand Boulevard, Motown Records in the 1960s stood out from the musical pack -- and still does today -- because of its ability to tune the tension between two opposing forces.

The Associated Press, on the occasion of Motown's 50th, invited both Motown greats and heavyweights from the worlds of music and beyond to discuss how the legendary Detroit musical movement's sound, style, savvy and sensuality have stood the test of time.

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#### **GETTING STARTED:**

"The thing that struck me was how ferociously determined he had to be to borrow that 800 bucks and start with nothing." -- Bill Clinton, former U.S. president

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The tale of the \$800 loan has become the stuff of legend.

Gordy worked at a Ford Motor Co. plant and wrote songs when he could, all the while dreaming of owning and running his own record company.

The loan from his family's savings club allowed him to make that happen.

He had the vision and the seed money, but next Gordy needed the talent -- the singers, songwriters and musicians.

He didn't have far to look.

Detroit alone produced many of the creative wizards who gave Motown its initial burst.

Robinson and the Miracles attended high school together, while Ross and future Supremes Mary Wilson and Florence Ballard grew up in the city's housing projects.

Gordy plucked from Detroit's flourishing nightclub scene a group of supremely talented jazz musicians who would become the label's house band, the Funk Brothers. Strings, winds and brass



came from the Detroit Symphony Orchestra and other classical outlets.

And the prolific songwriting trio known as Holland-Dozier-Holland -- Lamont Dozier and the Holland brothers, Brian and Eddie -- also were local hires.

The talent was there. Now what?

Gordy sought to incorporate some of the same principles from the auto factory floor and bring them to bear in the studio on West Grand.

He wanted it to be a place where everybody had a role, but the best ideas would win.

"Berry Gordy made sure everything they put out was 100 percent fierce, 100 percent listenable," said R&B singer Patti LaBelle, who was not a Motown artist but rose alongside it in the 1960s.

"Then, you know if you ... put on a Motown record, you were going to hear something with substance."

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## **MUSICIANSHIP/CREATIVITY**

"Berry Gordy -- people think of him as an entrepreneur, but he's a songwriter at heart, which makes total sense. You have a songwriter here and amazing songs. A guy has the brilliance to understand that it starts with great songs." -- Anita Baker, R&B singer

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Of course, it started with songs, but even that came with a competition more common to commerce than art.

Gordy knew cooperation was crucial but rivalries among singers as well as songwriting teams would be the best way to get a record out the door and onto the top of the charts.

"If (songwriter) Norman Whitfield had a No. 1 hit on The Temptations, Holland-Dozier-Holland would say, 'Shoot, we gotta get a No. 1 with The Four Tops. Come on in here, Tops,'" recalled Abdul "Duke" Fakir, the lone surviving original member of The Four Tops, which signed with Motown in 1963 and produced 20 top 40 hits during the next decade.

"I'd say, 'Yeah man, you'd better hurry up, man. I got a bet with The Temptations we're gonna have one in the next two weeks.' We would just push and push and push."

Fakir says there was a relentlessness on all levels of the recording process.



"Nothing was done generically. I've been to a lot of sessions outside of Motown where the session is very generic, very laid-back ... very professional, and there's no guts and blood," he said. "But here, everything was done with passion."

In 1965, during his label's ascendancy, Gordy said passion helped spur Motown to greatness.

"I talked about this one night over dinner with Smokey and Diana Ross," he told AP at the time. "We thought back about the neighborhoods we were in ... and we came up with a six-word definition: rats, roaches, struggle, talent, guts, love."

Motown left nothing to chance: A "quality control" committee met weekly to review the latest sonic offerings. Gordy was the final arbiter, but posed this question: Would you buy the record or a sandwich if you were down to your last dollar?

Don Felder, former guitarist for the Eagles and co-writer of their hit "Hotel California," says the results rarely failed.

"I don't know if anybody ever sat down and looked at the percentages of acts that Berry actually signed, recorded and released and the percentages of hits versus failures. But his track record has just been astronomical. ... He has just, in my opinion, the ears of a genius."

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### **SOUND/RECORDING:**

"You had naturally gifted engineers and producers that didn't let that technical expertise interfere with that rawness. ... Somehow the ... engineer/producers, thank God, either admittedly or just instinctually saw when these guys started jamming it just sounded good." -- Ted Nugent, rock guitarist and singer

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Gordy may have been blessed with an unparalleled ability to recognize hits, but many say those great songs probably would've been a bit more ordinary if not for Studio A.

It didn't look like anything special -- certainly by today's standards of digitized recording -- but the sounds it produced were.

"You didn't have Pro Tools. It was perfectly imperfect," said country star Wynonna Judd. "You had a lot of people who were sweaty and tired and who were singing from their toenails. ... If you can't cop it live, get off the porch."



A square, smallish room, Studio A was accessed by descending a small flight of stairs. Its below-ground standing earned it the nickname "The Snake Pit."

There, artists, writers, producers, engineers -- anybody associated with music-making -- gathered to record.

For 13 years, nearly every Motown hit was cut in Studio A and the adjacent control room.

The Funk Brothers set up shop -- James Jamerson on bass, Benny Benjamin on drums and so on -- and the singers did their thing, all face-to-face in the same room.

"The studio itself is its own beast. It can take away or it can add to the sounds you're making with your instruments," said pop singer-songwriter Gavin DeGraw. "Some rooms are dead. You play a note, and the sound disappears.

"Some rooms they ring too much. Acoustically, they're just too active. But some of them, they just have good sound. The (Motown) recordings I've heard come out of that room. I listen to those recordings all the time, and I think: 'Why does that room sound so good?' There's something to be said for it."

DeGraw liked the Motown recording approach so much that he rereleased his 2003 hit album "Chariot" a year later in a "stripped" format.

"I was really using that Motown ... sound as a template," he said. "I was thinking about those records and the rawness of those records."

The "sound" itself was a blend of traditional gospel, jazz, R&B and pop that had crossover appeal for audiences of all ages and races.

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#### **SOCIAL CHANGE/RACE:**

"It was the first, I think, black record company that was able to make the transition ... and was not only for the black music audience but also for a world music audience. I think that's what Motown represented." -- Danny Glover, actor and activist

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When Motown was born, as Robinson tells it, songs produced by African-American artists automatically were categorized as R&B, while a similar sound coming from a white artist would have been classified as pop.



But Gordy would have none of it. He set out to make music for all people, not "black music for black people" as had been the standard. While certain African-American artists had found a wider audience in the jazz and early rock-and-roll eras, Gordy took it a step further by pushing a sound that gained universal appeal and helped break down racial barriers in music.

His belief was that quality music would find its way into the ears of all, regardless of race.

"I think that's why it was so successful as a social tool, because it wasn't race-specific," DeGraw said. "It was just great music.

"And it allowed people to look past those typical lines. ... People could hear music like that in a time when people were looking at each other strangely, wondering what their motivations were, and they could go: 'Hey man, OK, no one's holding a grudge. It just sounds good. Let's enjoy ourselves.'"

For Baker, Motown's barrier-busting ways hit home.

"I remember 'The Ed Sullivan Show.' ... I'm a little kid. Every Sunday, Ed Sullivan comes on. And you get to see all of these artists from around the world. But Diana Ross and The Supremes come on. And I saw myself. Do you understand? I saw me," she said. "I saw a little black girl. ... I saw myself in a way I had never seen it before."

Motown billed itself as the "sound of young America," and it was that demographic that found itself at the center of the growing civil rights movement. Rosa Parks was arrested in Alabama a few years before Motown's founding, but the movement gained steam at the same time Motown did.

"Back in the '60s, when we weren't allowed to do or go certain places, our music crept into people's homes ... into their bathrooms, their bedrooms, their living rooms, their kitchens, their cars," Fakir said. "We spurred marriages and poor little crib babies ... 'cause parents were playing (our) music. ... That's how our legacy is going to be carried on."

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#### **LEGACY:**

"That sound is just as alive today. And that sound still stands up. ... Everybody in the whole wide world has been influenced by Detroit and the Motown sound." -- Dolly Parton, country singer, songwriter and actress

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Motown was groundbreaking in many ways -- from its signature sound and lengthy list of high-



profile artists to the unique way it created and recorded music -- but what's harder to pin down is what's kept the sound alive all these years.

"You hear (Motown) in almost everything," said Wilson, one-third of The Supremes. "I think Motown music, the Motown sound, is the model, the template that people use today in the music, and yes, you can hear it."

For many artists, it's inevitable that they would tread over some of the same ground because of the music's quality and distinctiveness.

"You can't get within sniffing distance of music, whether as a performer or listener, without being definitively impacted by these gods of thunder from Motown," said Nugent, the "Motor City Madman" who as a teenager played in a band that opened for The Supremes at Cobo Hall in Detroit.

Swift, a country singer-songwriter, admits it: She's one of the those whose sound is influenced by Motown. The 19-year-old, who has entered the realm of superstardom after back-to-back multi-platinum albums, says she and her father listened to his Motown greatest hits CD on the way to school.

"From an early age I had a bunch of different musical influences, but Motown I was just always so fascinated by the chord progression and how the lyrics and the melodies are so simple but they made you feel so much. I think that's the art of Motown," Swift said.

Another of the music world's hottest young acts, the Jonas Brothers, couldn't hide their glee at performing on this year's Grammy Awards telecast with Wonder, saying beforehand both they and their father grew up on the Motown legend's songs.

Not only did Motown bridge racial and generational gaps, but it also succeeded in crossing cultures.

Beatles manager Brian Epstein promoted Motown revues in the United Kingdom, which were popular with fans and stars alike. Fakir recalls being at a party with The Beatles, where the Fab Four peppered The Four Tops with questions about how they sang their harmonies and achieved other elements of their sound.

Motown even penetrated the Iron Curtain.

"I was in Russia some years ago before the walls came down. And we couldn't hardly get into Russia at that time -- the Cold War," said the Rev. Jesse Jackson. "All night long they played The Supremes, The Temptations, Stevie Wonder, Smokey Robinson. So the joy of Motown has been infectious around the world."



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**CODA:**

"Let's just say it's a collision of grit and beauty. They're raw records. ... But they're beautifully crafted. They're wonderful to listen to, on every level." -- Don Was, record producer and musician

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Another global sensation, the late Michael Jackson, also got his start at Motown as a member of The Jackson 5.

Gordy, at Jackson's memorial service in July, talked about the 10-year-old prodigy he signed, calling him "the greatest entertainer that ever lived."

Jackson and his brothers became instant teen sensations, but his stratospheric success came post-Motown in his adult years; he and his brothers left the label in the mid-1970s.

The Jackson 5 were one of the first acts to come up as Motown left Detroit for Los Angeles in the early 1970s. Most agree Motown's own California adventure has had its moments, but they don't match what happened in its hometown.

The Jackson 5, Gaye, Robinson, Ross and Wonder made the transition to L.A. and had chart-topping success, as did acts ranging from The Commodores to Rick James. Despite the plentiful hits among them, the sound was being challenged by newer grooves, and Motown lacked the deep roster it once had.

But by 1988, Gordy was ready to move on, selling Motown Records to MCA and a private equity firm. It was sold to PolyGram in the 1990s and now is held by Universal, where current acts include Lil' Wayne, Erykah Badu and Nelly.

Regardless of its present physical location, Motown is a Detroit creation, and that struggling Midwestern metropolis always will identify itself with the music.

"I'm glad they started in Detroit, and I hope that given the troubles they've got in Detroit now I hope they'll find some new version of Motown -- maybe in clean energy or something -- and 50 years from now somebody will be interviewed about that because Detroit gave America a great gift there," Clinton said.

Gordy and Robinson don't get back to Detroit all that often these days, but they were front and center at Hitsville on a crisp day this past March.



Contestants on the smash Fox singing competition "American Idol" came to Studio A to film segments for the show.

"I called it 'Motown,' rather than 'Motor City,' because there was more warmth here," Gordy told reporters that day. "The town was just beautiful. ... I may have left Detroit but wherever I go I carry Detroit with me. They know that's a Detroiter."

Robinson said the building that now houses the Motown Historical Museum was where "his real life began."

But the music that Robinson and scores more churned out of the cramped, sweaty confines of Studio A between 1959 to 1972 belong no more to them than the world.

"You can't ever know why something becomes timeless, whether it's the Jacksons, anybody. Beethoven -- we don't know," said Leonard Slatkin, music director of the Detroit Symphony.

"Maybe it's a simple thing: It's infectious. ... Something about this music -- I don't think of as being from the '60s or '70s anymore when I listen to it. It seems very fresh and new."

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AP Music Writer Nekesa Mumbi Moody in New York contributed to this report.

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OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT 6  
TO TRIAL DECLARATION  
OF PETER CAPARIS**



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<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
2 PISTOLS	SHE GOT IT	<b>Date</b> 04/28/2009	UNIVERSAL MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
PLATINUM	SINGLE	SOLO	MT

<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
702	702	<b>Date</b> 11/04/2002	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
PLATINUM	ALBUM	GROUP	ST

<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
98 DEGREES	BECAUSE OF YOU	<b>Date</b> 12/21/1998	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
PLATINUM	SINGLE	GROUP	ST

<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
98 DEGREES	98 DEGREES & RISING	<b>Date</b> 03/22/1999	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
PLATINUM	ALBUM	GROUP	ST

<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
98 DEGREES	98 DEGREES & RISING	<b>Date</b> 07/12/1999	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
2.00x MULTI PLATINUM	ALBUM	GROUP	ST

<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
98 DEGREES	98 DEGREES & RISING	<b>Date</b> 10/12/1999	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
3.00x MULTI PLATINUM	ALBUM	GROUP	ST

<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
98 DEGREES	THIS CHRISTSMAS	<b>Date</b> 12/22/1999	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
PLATINUM	ALBUM	GROUP	ST

<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
98 DEGREES	HEAT IT UP	<b>Date</b> 01/27/2000	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>

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PLATINUM	VIDEO LONGFORM	GROUP	ST
<b>Artist</b> 98 DEGREES	<b>Title</b> 98 DEGREES & RISING	<b>Certification Date</b> 01/27/2000	<b>Label</b> MOTOWN
<b>Award Description</b> 4.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> AKON	<b>Title</b> DON?T MATTER	<b>Certification Date</b> 12/13/2007	<b>Label</b> UNIVERSAL MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> SOLO	<b>Type</b> DI
<b>Artist</b> AKON	<b>Title</b> I WANNA LOVE YOU	<b>Certification Date</b> 12/13/2007	<b>Label</b> UNIVERSAL MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> SOLO	<b>Type</b> DI
<b>Artist</b> ANOTHER BAD CREATION	<b>Title</b> COOLIN' AT THE PLAYGROUND YA KNOW	<b>Certification Date</b> 05/24/1991	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BADU, ERYKAH	<b>Title</b> MAMA'S GUN	<b>Certification Date</b> 12/19/2000	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> BIRDMAN	<b>Title</b> POP BOTTLES	<b>Certification Date</b> 04/28/2009	<b>Label</b> UNIVERSAL MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> SOLO	<b>Type</b> MT
<b>Artist</b> BOYS, THE	<b>Title</b> MESSAGES FROM THE BOYS	<b>Certification Date</b> 06/01/1989	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> COOLEYHIGHHARMONY	<b>Certification Date</b> 08/20/1991	<b>Label</b> MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>



PLATINUM	ALBUM	GROUP	ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> MOTOWNPHILLY	<b>Certification Date</b> 10/31/1991	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> COOLEYHIGHHARMONY	<b>Certification Date</b> 11/14/1991	<b>Label</b> MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> COOLEYHIGHHARMONY	<b>Certification Date</b> 01/10/1992	<b>Label</b> MOTOWN
<b>Award Description</b> 3.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> COOLEYHIGHHARMONY	<b>Certification Date</b> 04/10/1992	<b>Label</b> MOTOWN
<b>Award Description</b> 4.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> END OF THE ROAD	<b>Certification Date</b> 09/16/1992	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> COOLEYHIGHHARMONY	<b>Certification Date</b> 12/17/1992	<b>Label</b> MOTOWN
<b>Award Description</b> 5.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> IN THE STILL OF THE NITE	<b>Certification Date</b> 01/27/1993	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> CHRISTMAS INTERPRETATIONS	<b>Certification Date</b> 12/09/1993	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST



<b>Artist</b> BOYZ II MEN	<b>Title</b> I'LL MAKE LOVE TO YOU	<b>Certification Date</b> 10/06/1994	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> II	<b>Certification Date</b> 11/01/1994	<b>Label</b> MOTOWN
<b>Award Description</b> 3.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> II	<b>Certification Date</b> 11/01/1994	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> II	<b>Certification Date</b> 12/01/1994	<b>Label</b> MOTOWN
<b>Award Description</b> 5.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> II	<b>Certification Date</b> 01/11/1995	<b>Label</b> MOTOWN
<b>Award Description</b> 6.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> ON BENDED KNEE	<b>Certification Date</b> 01/25/1995	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> II	<b>Certification Date</b> 01/31/1995	<b>Label</b> MOTOWN
<b>Award Description</b> 7.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> II	<b>Certification Date</b> 06/14/1995	<b>Label</b> MOTOWN
<b>Award Description</b> 8.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST



<b>Artist</b> BOYZ II MEN	<b>Title</b> FROM THEN II NOW	<b>Certification Date</b> 08/31/1995	<b>Label</b> MOTOWN HOME VIDEO
<b>Award Description</b> PLATINUM	<b>Format</b> VIDEO LONGFORM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> COOLEYHIGHHARMONY	<b>Certification Date</b> 12/18/1995	<b>Label</b> MOTOWN
<b>Award Description</b> 9.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> II	<b>Certification Date</b> 12/18/1995	<b>Label</b> MOTOWN
<b>Award Description</b> 11.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> II	<b>Certification Date</b> 06/13/1996	<b>Label</b> MOTOWN
<b>Award Description</b> 12.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> THE REMIX ALBUM	<b>Certification Date</b> 07/10/1996	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> CHRISTMAS INTERPRETATIONS	<b>Certification Date</b> 10/18/1996	<b>Label</b> MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> 4 SEASONS OF LONLINESS	<b>Certification Date</b> 10/14/1997	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> EVOLUTION	<b>Certification Date</b> 10/28/1997	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST



<b>Artist</b> BOYZ II MEN	<b>Title</b> EVOLUTION	<b>Certification Date</b> 12/23/1997	<b>Label</b> MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> BOYZ II MEN	<b>Title</b> A SONG FOR MAMA	<b>Certification Date</b> 03/05/1998	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> CAILLAT, COLBIE	<b>Title</b> COCO	<b>Certification Date</b> 11/12/2007	<b>Label</b> UNIVERSAL MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> CAILLAT, COLBIE	<b>Title</b> COCO	<b>Certification Date</b> 08/04/2009	<b>Label</b> UNIVERSAL MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> COMMODORES	<b>Title</b> NATURAL HIGH	<b>Certification Date</b> 08/22/1978	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> COMMODORES	<b>Title</b> HEROES	<b>Certification Date</b> 02/03/1981	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> COMMODORES	<b>Title</b> IN THE POCKET	<b>Certification Date</b> 12/16/1981	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> GAYE, MARVIN	<b>Title</b> MARVIN GAYE'S GREATEST HITS	<b>Certification Date</b> 12/20/1993	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b>	<b>Title</b>	<b>Certification Label</b>	



<b>GAYE, MARVIN</b>	<b>EVERY GREAT MOTOWN HIT</b>	<b>Date</b> 10/18/1996	<b>MOTOWN</b>
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> GAYE, MARVIN	<b>Title</b> LET'S GET IT ON	<b>Certification Date</b> 06/25/2007	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> SOLO	<b>Type</b> MT

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<b>Artist</b> GILL, JOHNNY	<b>Title</b> JOHNNY GILL	<b>Certification Date</b> 06/18/1990	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> GILL, JOHNNY	<b>Title</b> JOHNNY GILL	<b>Certification Date</b> 02/08/1991	<b>Label</b> MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> INDIA.ARIE	<b>Title</b> ACOUSTIC SOUL	<b>Certification Date</b> 12/06/2001	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> INDIA.ARIE	<b>Title</b> ACOUSTIC SOUL	<b>Certification Date</b> 12/17/2003	<b>Label</b> MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> INDIA.ARIE	<b>Title</b> VOYAGE TO INDIA	<b>Certification Date</b> 08/04/2006	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> JACKSON FIVE, THE	<b>Title</b> I WANT YOU BACK	<b>Certification Date</b> 08/07/1997	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> MC DONALD, MICHAEL	<b>Title</b> MOTOWN	<b>Certification Date</b> 02/19/2004	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> MC KNIGHT, BRIAN	<b>Title</b> ANYTIME	<b>Certification Date</b> 04/22/1998	<b>Label</b> MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>

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PLATINUM	ALBUM	SOLO	ST
<b>Artist</b> MC KNIGHT, BRIAN	<b>Title</b> ANYTIME	<b>Certification Date</b> 10/15/1998	<b>Label</b> MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> MC KNIGHT, BRIAN	<b>Title</b> BACK AT ONE	<b>Certification Date</b> 10/27/1999	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> MC KNIGHT, BRIAN	<b>Title</b> BACK AT ONE	<b>Certification Date</b> 01/24/2000	<b>Label</b> MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> MC KNIGHT, BRIAN	<b>Title</b> BACK AT ONE	<b>Certification Date</b> 10/24/2001	<b>Label</b> MOTOWN
<b>Award Description</b> 3.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> RARE EARTH	<b>Title</b> GET READY	<b>Certification Date</b> 10/30/2000	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> RICHIE, LIONEL	<b>Title</b> LIONEL RICHIE	<b>Certification Date</b> 12/09/1982	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> RICHIE, LIONEL	<b>Title</b> CAN'T SLOW DOWN	<b>Certification Date</b> 12/12/1983	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> RICHIE, LIONEL	<b>Title</b> LIONEL RICHIE	<b>Certification Date</b> 10/19/1984	<b>Label</b> MOTOWN
<b>Award Description</b> 4.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST



<b>Artist</b> RICHIE, LIONEL	<b>Title</b> CAN'T SLOW DOWN	<b>Certification Date</b> 10/19/1984	<b>Label</b> MOTOWN
<b>Award Description</b> 8.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> RICHIE, LIONEL	<b>Title</b> CAN'T SLOW DOWN	<b>Certification Date</b> 12/19/1985	<b>Label</b> MOTOWN
<b>Award Description</b> 10.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> RICHIE, LIONEL	<b>Title</b> DANCING ON THE CEILING	<b>Certification Date</b> 10/16/1986	<b>Label</b> MOTOWN
<b>Award Description</b> 3.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> RICHIE, LIONEL	<b>Title</b> DANCING ON THE CEILING	<b>Certification Date</b> 10/16/1986	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> RICHIE, LIONEL	<b>Title</b> DANCING ON THE CEILING	<b>Certification Date</b> 05/21/1987	<b>Label</b> MOTOWN
<b>Award Description</b> 4.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> RICHIE, LIONEL	<b>Title</b> BACK TO FRONT	<b>Certification Date</b> 10/20/1992	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> ROSS, DIANA	<b>Title</b> DIANA	<b>Certification Date</b> 02/03/1981	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST
<b>Artist</b> ROSS, DIANA AND LIONEL RICHIE	<b>Title</b> ENDLESS LOVE	<b>Certification Date</b> 10/16/1981	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> DUO	<b>Type</b> ST



<b>Artist</b> ROSS, DIANA AND THE SUPREMES	<b>Title</b> SOMEDAY WE'LL BE TOGETHER	<b>Certification</b> <b>Date</b> 08/07/1997	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> ROSS, DIANA AND THE SUPREMES WITH THE TEMPTATIONS	<b>Title</b> I'M GONNA MAKE YOU LOVE ME	<b>Certification</b> <b>Date</b> 08/07/1997	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> SOUNDTRACK	<b>Title</b> THE BIG CHILL	<b>Certification</b> <b>Date</b> 03/29/1984	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> None	<b>Type</b> ST
<b>Artist</b> SOUNDTRACK	<b>Title</b> THE BIG CHILL	<b>Certification</b> <b>Date</b> 09/27/1985	<b>Label</b> MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> None	<b>Type</b> ST
<b>Artist</b> SOUNDTRACK	<b>Title</b> THE BIG CHILL	<b>Certification</b> <b>Date</b> 07/20/1998	<b>Label</b> MOTOWN
<b>Award Description</b> 4.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> None	<b>Type</b> ST
<b>Artist</b> SOUNDTRACK	<b>Title</b> MORE SONGS FROM THE BIG CHILL	<b>Certification</b> <b>Date</b> 08/06/1998	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> None	<b>Type</b> ST
<b>Artist</b> SOUNDTRACK	<b>Title</b> THE BIG CHILL	<b>Certification</b> <b>Date</b> 10/15/1998	<b>Label</b> MOTOWN
<b>Award Description</b> 6.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> None	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> MY GIRL	<b>Certification</b> <b>Date</b> 09/08/1997	<b>Label</b> MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>



PLATINUM	SINGLE	GROUP	ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> TEMPTATIONS ANTHOLOGY	<b>Certification Date</b> 10/12/1999	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> JUST MY IMAGINATION	<b>Certification Date</b> 10/12/1999	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> ALL THE MILLION- SELLERS	<b>Certification Date</b> 10/12/1999	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> I CAN'T GET NEXT TO YOU	<b>Certification Date</b> 10/12/1999	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> PHOENIX RISING	<b>Certification Date</b> 10/12/1999	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> BALL OF CONFUSION	<b>Certification Date</b> 10/12/1999	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> PAPA WAS A ROLLIN' STONE	<b>Certification Date</b> 10/12/1999	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> SINGLE	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> GREATEST HITS	<b>Certification Date</b> 10/15/1999	<b>Label</b> MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>



PLATINUM	ALBUM	GROUP	ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> GIVE LOVE AT CHRISTMAS	<b>Certification Date</b> 10/15/1999	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> GREATEST HITS	<b>Certification Date</b> 10/15/1999	<b>Label</b> MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> 20TH CENTURY MASTERS - THE BEST OF THE TEMPTATIONS	<b>Certification Date</b> 08/24/2005	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> GET READY: DEFINITIVE PERFORMANCES 1965-1972	<b>Certification Date</b> 06/29/2007	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> VIDEO LONGFORM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> TEMPTATIONS, THE	<b>Title</b> GET READY: DEFINITIVE PERFORMANCES 1965-1972	<b>Certification Date</b> 01/07/2009	<b>Label</b> MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> VIDEO LONGFORM	<b>Category</b> GROUP	<b>Type</b> ST
<b>Artist</b> VARIOUS	<b>Title</b> MOTOWN 25: YESTERDAY, TODAY, FOREVER	<b>Certification Date</b> 02/18/1986	<b>Label</b> MOTOWN HOME VIDEO
<b>Award Description</b> PLATINUM	<b>Format</b> VIDEO LONGFORM	<b>Category</b> None	<b>Type</b> ST
<b>Artist</b>	<b>Title</b>	<b>Certification Label</b>	



WONDER, STEVIE	THE WOMAN IN RED (SOUNDTRACK)	<b>Date</b> 11/08/1984	MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST

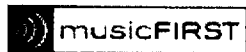
<b>Artist</b> WONDER, STEVIE	<b>Title</b> IN SQUARE CIRCLE	<b>Certification Date</b> 11/13/1985	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST

<b>Artist</b> WONDER, STEVIE	<b>Title</b> IN SQUARE CIRCLE	<b>Certification Date</b> 12/04/1985	<b>Label</b> MOTOWN
<b>Award Description</b> 2.00x MULTI PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST

<b>Artist</b> WONDER, STEVIE	<b>Title</b> CHARACTERS	<b>Certification Date</b> 01/08/1988	<b>Label</b> MOTOWN
<b>Award Description</b> PLATINUM	<b>Format</b> ALBUM	<b>Category</b> SOLO	<b>Type</b> ST

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<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
WONDER, STEVIE	SONG REVIEW: GREATEST HITS	<b>Date</b> 03/24/2003	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
PLATINUM	ALBUM	SOLO	ST

<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
WONDER, STEVIE	SONGS IN THE KEY OF LIFE	<b>Date</b> 03/29/2005	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
PLATINUM	ALBUM	SOLO	ST

<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
WONDER, STEVIE	SONGS IN THE KEY OF LIFE	<b>Date</b> 03/29/2005	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
10.00x MULTI PLATINUM	ALBUM	SOLO	ST

<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
WONDER, STEVIE	THE DEFINITIVE COLLECTION	<b>Date</b> 06/22/2005	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
PLATINUM	ALBUM	SOLO	ST

<b>Artist</b>	<b>Title</b>	<b>Certification</b>	<b>Label</b>
ZHANE	ZHANE	<b>Date</b> 10/04/1996	MOTOWN
<b>Award Description</b>	<b>Format</b>	<b>Category</b>	<b>Type</b>
PLATINUM	ALBUM	DUO	ST

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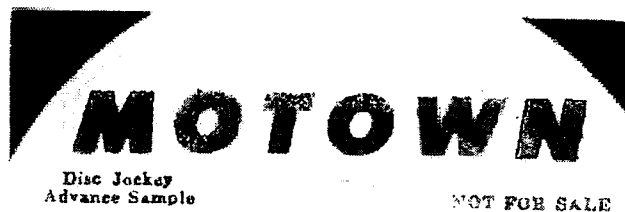
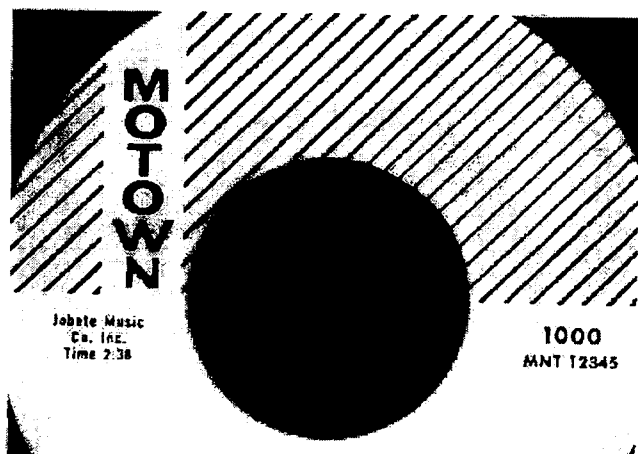


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**EXHIBIT 7  
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JR. WALKER and the ALL STARS



Motown

Exhibit 7  
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**THE  
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**HELPLESS**

GORDY 7638

**KIM WESTON**

*The Sound of Young America*  
**MOTOWN RECORD CORP.**  
DETROIT, MICH.

Motown





**Smokey Robinson  
and the Miracles**  
“**SECOND  
THAT  
EMOTION**”

TAMLA 54159

**MOTOWN  
RECORD CORP.**

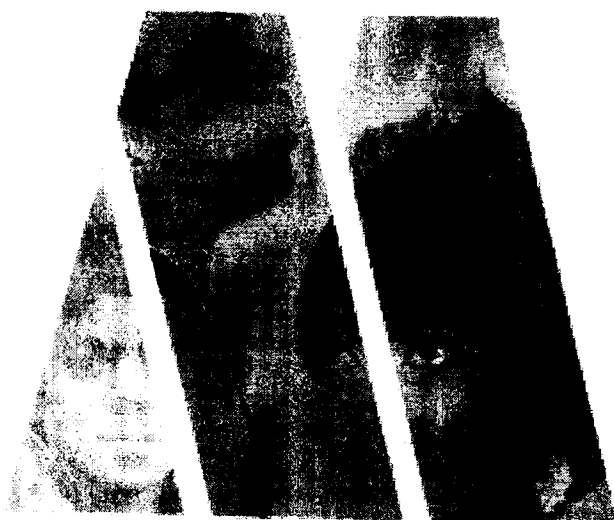
**ZOOMING TO THE TOP  
OF THE CHARTS**

**“HONEY  
CHILE”**  
GORDY 7067  
**Martha Reeves  
and the Vandella**

**MOTOWN  
RECORD CORP.**

*The Sound of Young America*

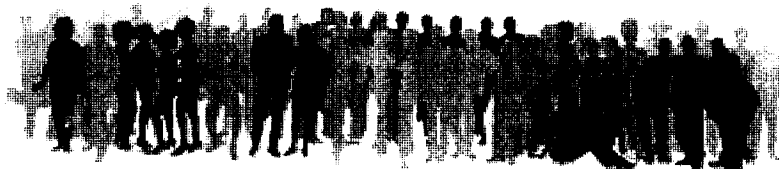




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"All over the world, all through the races,  
all through everything, Motown bridged a  
gap... and I'm so proud of that!"

**William "Smokey" Robinson.**  
(*Smokey Robinson & The Miracles*)

*Hitsville USA*  
MOTOWN HISTORICAL MUSEUM

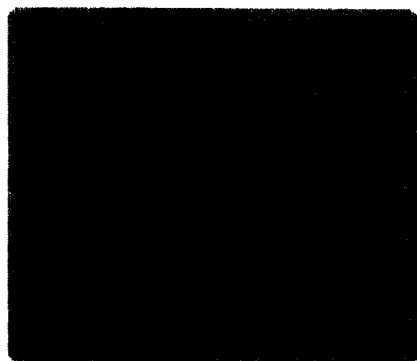
Motown Historical Museum is one of Detroit's most popular tourist destinations. Each year, the museum attracts thousands of visitors from across the nation and around the globe. The museum was founded in 1985 by Esther Gordy Edwards. Its mission is to preserve the legacy of Motown Record Corporation and to educate and motivate people, especially youth, through exhibitions and programs that promote the values of vision, creativity and entrepreneurship.

The museum exhibits trace the roots of Motown's remarkable story and chronicle its impact on 20th century popular culture and musical styles. The story begins with Berry Gordy, Jr. and a small house in Detroit that he christened. Hitsville USA (now home to Motown Historical Museum). The story continues as Motown evolves into a major entertainment enterprise that was among the most diverse and influential in the world.

The exhibitions include a fascinating collection of historical photographs, artwork, music, costumes and other memorabilia from this booming musical era. Each item tells a story – from the \$800 loan given to Berry Gordy, Jr. by the Gordy family savings club (the Ber-Berry Co-op) to produce his first record – to the explosive popularity of Motown's artists throughout the world. Visitors take a step back in time as they walk through the fully restored apartment that was once home to Berry Gordy, Jr. and stand in the original

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recording studio "Studio A" where Motown's greatest hits were recorded.

## MUSEUM HIGHLIGHTS

### **Empire on West Grand Boulevard**

This museum exhibit is a telling representation of the growth of Motown from a small startup business begun in 1959 to what became by the mid-70s the largest independent record company in the world. The exhibit includes models of eight houses on West Grand Boulevard acquired by the company to house its growing operations until it moved its offices to a high-rise in downtown Detroit in 1968. The display begins with Gordy's purchase of "Hitsville USA", a house that served a dual purpose as his company headquarters and home. Visitors see the houses that made up the Motown empire from the front porch of the Hitsville house.

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IMDb > **Motown 40: The Music Is Forever (1998) (TV)**



## Motown 40: The Music Is Forever (1998) (TV)

### Overview

#### User Rating:

5.2/10 66 votes

#### MOVIEmeter: Ⓢ

Down 28% in popularity this week. See why on IMDbPro.

#### Director:

Yvonne Smith

#### Writers:

Suzanne De Passe (writer)  
 Ruth Robinson (special material)  
[more](#)

#### Contact:

View company contact information for Motown 40: The Music Is Forever on IMDbPro.

#### Release Date:

15 February 1998 (USA) [more](#)

#### Genre:

Documentary | Music [more](#)

#### Plot Keywords:

Soul Music | Concert Film | African American | Non Fiction

#### Awards:

1 nomination [more](#)

#### User Comments:

Great! [more](#)

#### Cast (Credited cast)



Diana Ross

... Herself - Host

rest of cast listed alphabetically:

Nick Ashford

... Himself

Florence Ballard

... Herself (archive footage)

Shelly Berger

... Himself

Cindy Birdsong

... Herself (archive footage)

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Michael Bolton	...	Himself
Julian Bond	...	Himself
Albridge Bryant	...	Himself (archive footage) (as Elbridge 'Al' Bryant)
 Mariah Carey	...	Herself
Diahann Carroll	...	Herself
 Dick Clark	...	Himself
George Clinton	...	Himself
 Sean 'P. Diddy' Combs	...	Himself
 Don Cornelius	...	Himself
 Clive Davis	...	Himself
Lamont Dozier	...	Himself
Kenneth 'Babyface' Edmonds	...	Himself
Dennis Edwards	...	Himself (archive footage)
Aretha Franklin	...	Herself
Melvin Franklin	...	Himself (archive footage) (as The Temptations)
Harvey Fuqua	...	Himself
Marvin Gaye	...	Himself (archive footage)
Berry Gordy	...	Himself
Brian Holland	...	Himself
Eddie Holland	...	Himself
Jesse Jackson	...	Himself
 Rick James	...	Himself
 Jimmy Jam	...	Himself
Eddie Kendricks	...	Himself (archive footage)



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	Terry Lewis	...	Himself
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	Branford Marsalis	...	Himself
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	Bonnie Raitt	...	Herself
	Martha Reeves	...	Herself (archive footage)
	Lionel Richie	...	Himself
	Claudette Robinson	...	Herself
	Smokey Robinson	...	Himself
	David Ruffin	...	Himself (archive footage)
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	George Schlatter	...	Himself
	Russell Simmons	...	Himself
	Valerie Simpson	...	Herself
	Raynoma Singleton	...	Herself
	Martha Jean Steinberg	...	Herself
	Rod Stewart	...	Himself
	Richard Street	...	Himself (archive footage)
	Levi Stubbs	...	Himself
	James Taylor	...	Himself
	Tammi Terrell	...	Herself (archive footage)
	Ron Tyson	...	Himself (archive footage)
	Luther Vandross	...	Himself
	Cornel West	...	Himself



Norman Whitfield	...	Himself
Otis Williams	...	Himself
Paul Williams	...	Himself (archive footage)
Jackie Wilson	...	Himself (archive footage)
Mary Wilson	...	Herself

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**Color:** Color

**Aspect Ratio:** 1.78 : 1 [more](#)

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**Great!**, 11 November 2000

Author: Monika-5 from United States

What a great show! The Motown 40th Anniversary celebration was showed in two parts. The sp archive footage and commentary from singers, producers, songwriters, etc. It takes you from Mc the stars started out. If you're a Motown fan, or just a music fan in general, you'll really enjoy this

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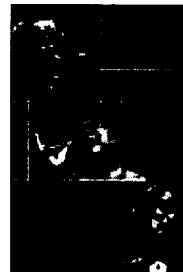
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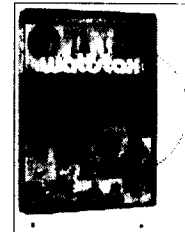
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## Motown veteran celebrates company's 40th anniversary

Article from: The Philadelphia Tribune Article date: June 12, 1998

Philadelphia Tribune, The

06-12-1998

### Motown veteran celebrates company's 40th anniversary

This year, Motown Records is celebrating its 40th year in business and four decades of memories. And if most of that time was spent working at the world's best known record label then you know there are some incredible tales to tell and cherished memories to share.

Georgia Ward, 62, is the only employee working at Motown who was with the company in its earliest days while the then-fledgling company was still headquartered in Detroit.

While it was pioneer Berry Gordy Jr. who dreamed of starting a record company with an \$800 loan in 1959, it was people like Georgia who had the envied position of working with a host of future musical legends. Among them were such acts as the Temptations, Little Stevie Wonder, the Supremes, Mary Wells, the Marvelettes, and Smokey Robinson and the Miracles.

With all the automobile industry-related jobs in Detroit, Georgia never dreamed she would witness the growth of an entertainment legacy, when she moved from her hometown of Buffalo, N.Y., in 1966.

"All I wanted was a job," smiles the spry, 32-year Motown veteran. However, as Gordy set about the task of forging a record label that the entire world would come to love and respect, Georgia found her life enriched with glowing memories of a time when that history was being made.

Recounting how she found her way to Detroit, Georgia says it was a weekend trip to visit a girlfriend that spurred the then-29-year-old to move to Michigan's largest city. "It was a fun town that was full of energy, so I decided that it was the place for me."

Although her relocation to Georgia found her way into Motown was a little more difficult. "An employment agency sent me there because of my secretarial skills and I was promised a job but there was some kind of mix up because when I arrived for my first day on the job, somebody else was working at my desk."

Coming so close to such a promising opportunity only to have it pulled from under you is either devastating or motivating. Ever the optimist, Georgia put one foot in front of the other and made her way to the person who was in charge of hiring at the time. Planting herself in the woman's tiny office, Georgia resolved not to move until she got the job she had been promised.



"It was pretty tense in that small little office that morning because I needed work and wasn't going anywhere," she remembers. "I could tell this place was special because there was this sort of energy that I felt." As fortune would have it, the phone rang as Georgia quietly sat. "Somebody had just quit and there was an opening," she says. "So guess who got the job?"

Georgia's first job with the label was indexing data on all of Motown's artist recording sessions. "The first artist I met was Marvin Gaye," she beams. "I remember him being so good looking, but very polite and down to earth. That's the thing about all of the artists there. You knew they had this special talent for entertaining, but at the same time, they had their hats on straight and everybody treated everybody like family. It was a great year for me."

The starry-eyed new label hire wasn't the only one who had a good year in 1966. Motown's act the Temptations blistered the soul charts with four consecutive No. 1 hits ("Get Ready," "Ain't Too Proud to Beg," "Beauty is Only Skin Deep," and "(I Know) I'm Losing You"), while their label mates, the Supremes, the Four Tops, and Stevie Wonder also scored with No. 1 singles as well.

As with the other employees, executives and artists with Motown at the time, Georgia had little idea of the 40-year legacy they were building. "Maybe that's why all of the artists were such regular people, without that arrogant 'star' attitude you see so much nowadays," she says.

It is said that it takes a village to raise a child and nowhere was that adage more true than at Motown. Georgia said one day Berry Gordy's 9-year-old son, Berry IV, was visiting the office and was in a particularly energetic mood. "He was ripping and running all over, playing with paper clips and shooting spitballs. After a time, I asked him to stop but he wouldn't. So I picked up my ruler and gave him a swat on the hand."

"Later that day, I got a call from Mr. Gordy's office saying he wanted to see me and I thought, 'Oh Lord.' When I walked into his office he said, 'I understand you hit my son. What happened?'"

"Well, Berry IV was there and he started hollering, 'I want her fired! I want her fired!'"

"You can imagine what was going through my mind as I stood there, but I explained to Mr. Gordy what had happened and he leveled his eyes at me and simply said, 'Good for you' and excused me. As I was leaving, I heard Berry IV yelling to his father, 'You're not going to fire her?' Mr. Gordy just looked at his son and said, 'I told you when you come to the office that you had to be good.'"

Georgia's tenure with Motown has been filled with cherished encounters. She reports that her most memorable artist encounter was while working in the original Hitsville offices in Detroit soon after she was hired.

"You have to remember that we were working in a house. We heard all the music from the recording sessions, because our office was right about the recording studio. One day, we were all hard at work when I heard this loud banging and thought 'What on earth?' When I asked what all the racket was, somebody said, 'Oh that's just Stevie.'"

"I was just flabbergasted because he had made his way to the office and up the back stairs all by himself. And then when he came into the room where we were, he just stopped and said, 'There's somebody new here.' I couldn't believe it."



Georgia managed to recover from Stevie Wonder's whirlwind arrival in time to answer his questions as to her name and zodiac sign. "From that day on, he called me Pisces," she recalls with a smile. "You can imagine how thrilling things were around the office. One minute you're hard at work and the next you're sitting there talking with one of the hottest names in music."

During her career with the label, Georgia worked in several departments engaged in a variety of administrative, archival and operations-related positions. "It gave me a chance to meet all the artists and staff, and see inside the inner workings of a record label," she says. "It was all so exciting. We were growing so fast and had such early success, but Mr. Gordy kept everyone involved in the record-making process, which made us all feel like family; there was a real camaraderie among us."

Georgia says it was not at all unusual for Gordy to assemble staff from various departments to listen to a newly recorded song and then ask them for comments. "It helped us all to really connect with what was happening on the creative side of the company. That level of involvement is one of the things that made it special to work at Motown.

Another specialty of Motown's working environment was the fact that it afforded Black women the opportunity to hold significant positions within the company without the benefit of scholastic degrees. This was rare in those days, because women as a whole did not play an integral part of the inner workings of the music business. It was a man's world.

However at Motown, various women held the positions of A&R (Artists & Repertoire) Director, head of manufacturing, quality control manager, head of artist management and head of artist development just to name a few. These women had the fortitude to go forward with their instincts to get the jobs done. They were the behind-the-scenes unsung heroines of Motown."

In 1972, Stevie Wonder's "Superstition" was No. 1 for three weeks. It was also the year that Motown pulled up stakes and headed West to its new digs in Hollywood, California. However, Georgia, along with two other employees, remained in Detroit. "We still had our recording studio there and most of the artists still wanted to record there. I guess because it was so familiar to them and allowed them to do their best work," she speculates.

Eventually the relocated Motown headquarters required Georgia's full time services, so she was moved to Los Angeles where she continued working in the A&R department. Other areas where she's worked in the 20 years since moving include the L.A. recording studio as traffic manager, in A&R as production manager, in the tape library, the label's archive manager, and in the special markets department.

By 1995, Motown had relocated its headquarters again, this time to New York. And as before, Georgia remained behind holding down the vital job of managing the archives. Two years later, when current president/CEO George Jackson took the helm of the company, he mandated greater exploration of Motown's exhaustive archives in an effort to issue rare, previously unheard recordings a task ideally suited for Georgia, who knew the indexing and catalog files better than anyone.

"It's amazing how much untapped music exists in our vaults; rare, unreleased, gospel, Spanish, hard-to-find classics, etcetera, that I am in the process of compiling for release. For example, there are duet recordings with Stevie Wonder and [The Four Tops] Levi Stubbs as well as many others," she reports.



Georgia was also largely responsible for selecting the 40 songs that appear on Motown's signature anniversary double CD release, "Motown 40 Forever." "So many artists have passed through the doors of Motown, and today our act Boyz II Men rules the radio," Georgia says. "The label is coming full circle with our new president who wants to share it all with everyone and I'm just taking it one day at a time."

Ethnic NewsWatch & SoftLine Information, Inc., Stamford, CT

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Mar 26 1998 10:00 AM EST

## Motown Sound Reaches Out To The Web

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As part of the label's 40th anniversary celebration, Motown Records has launched a new web site that illustrates its musical past and offers a glimpse into the label's future.

Located on the internet at [www.motown40.com](http://www.motown40.com), the site pleases old school fans with info on such Motown artists as Smokey Robinson, Diana Ross, the Jackson 5 and Marvin Gaye, in addition to present acts Boyz II Men, Queen Latifah, Zhane and 98 Degrees.

The Motown site also offers a digitized history of the influential label via a comprehensive timeline, complete artist discography and photo archive, as well as a RealAudio jukebox which samples the upcoming "Motown 40 Forever" double-album set.

The label plans to expand the site in upcoming months to include artist updates, feature stories and live chats with acts from the Motown roster.

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Mendelssohn's op.119 and Paganini's *Allegro d concert* op.11 for violin and orchestra. There are many others for which the exhibition of a performer's digital agility seems the sole justification.

The quality of perpetual (not necessarily rapid) movement has, however, always been a resource capable of yielding valuable results. The continuous forward momentum of many Baroque movements is due to the relentless persistence of a *Gehende-bass* ('walking bass'). Continuous movement is implied in the character of dances like the tarantella, and may justifiably be employed to achieve brilliance in forms like the toccata (e.g. Schumann's op.7) or in the finale of a larger work (e.g. Haydn's String Quartet op.64 no.5). It is used in Chopin's B♭ minor Piano Sonata op.35 to achieve a close of feverish brilliance; Chopin often used effects of perpetual motion in his studies. In song accompaniments, far from being a purely mechanical device, it may appropriately reflect the mood of the verse. The desperation in Schubert's *Erstarrung* (*Winterreise*, no.4) is achieved partly through such means; the momentary cessations of movement in his settings of *Erlkönig* and *Gretchen am Spinnrade*, and in the finales of Beethoven's piano sonatas op.26, op.31 no.3 and op.54, sensitively articulate the design of movements all of which rely heavily on the device of *moto perpetuo*. Johann Strauss the younger wrote his well-known *Perpetuum mobile* op.257 as a 'musikalischer Scherz' ('musical joke').

MICHAEL TILMOUTH

Motown. American record company specializing in black soul music; the name is the registered trademark of the company but has also come to be used as a descriptive term for the associated musical style. The company was founded by BERRY GORDY in Detroit ('motor town': hence the name) in 1959 as Tamla Records, the Motown imprint following in 1961. Subsequent subsidiary labels to Motown included Gordy (1962), Soul (1964), VIP (1964), Rare Earth (1969) and Black Forum (1970). Gordy himself trained all the early songwriters and producers in an attempt to reach both black and white audiences, and quickly achieved hits with the Miracles, the Marvelettes, Mary Wells and Martha and the Vandellas. By 1963 Motown's sales of singles in the USA were exceeded only by RCA and CBS, and soon such artists as Marvin Gaye, the Supremes, Stevie Wonder, the Temptations, the Four Tops and Junior Walker and the All-Stars had been built into superstars.

Motown's distinctive sound developed from a policy of using the same teams of songwriters and producers, the same musicians and the same studio for virtually every recording. Although there was a fair degree of latitude in the realization of this sound from artist to artist, there were a number of important general characteristics. While the basic pulse was always articulated by a variety of instruments (sometimes aided by handclaps and foot stamping rooted in gospel music) and featured prominently in the mix, the backbeat was often minimized. The lead instrument was commonly a non-rock or rhythm and blues instrument such as a bassoon, english horn or vibraphone. The production tended to emphasize the lead singer in the mix with the instrumental accompaniment, blended in a fashion clearly influenced by the dense 'wall of sound' productions of Phil Spector. The high end of the sound register was often favoured as were composite timbres frequently produced by combining up to four

sound sources. James Jamerson's bass lines were more tonally developed (involving a high level of chromaticism and passing notes) than many of the time. Lyrics tended to be rich in internal rhyme, alliteration, metaphor and other poetic devices, and songs tended to have multiple hooks.

In 1971 Motown moved to Los Angeles in order to expand into films and enjoyed continued success with Gaye and Wonder, as well as the Commodores, the Jackson 5, Rick James and Lionel Richie. However the relocation contributed to the company's losing its focus and consequently, as performers recorded in whatever style was popular at the time, its characteristic sound. In 1988 Gordy sold Motown to MCA records.

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G. Hirshey: *Nowhere to Run: the Story of Soul Music* (New York, 1984)  
N. George: *Where did our Love Go? The Rise and Fall of the Motown Sound* (New York, 1985)  
D. Waller: *The Motown Story: the Inside Story of America's most Popular Music* (New York, 1985)  
J.R. Taraborelli: *Hot Wax, City Cool and Solid Gold: Motown* (New York, 1986)  
S. Davis: *Motown: the History* (London, 1988)  
B. Fong-Torres: *The Motown Album* (New York, 1990)  
R.G. Singleton: *The Untold Story: Berry, Me, and Motown* (Chicago, 1990)  
B. Gordy: *To Be Loved: the Music, the Magic, the Memories of Motown* (New York, 1994)

ROB BOWMAN

Motsev, Alexander (*b* Lom, 16 Oct 1900; *d* between Lom and Sofia, 24 Dec 1964). Bulgarian music folklorist. He studied music theory with Dobri Khristov and music history, education and aesthetics with Stoyan Brashovanov at the State Music Academy in Sofia, where he graduated in 1925. From 1925 to 1938 he taught music at the gymnasium in Lom; he also produced a dozen operettas and operas (including Gluck's *Orfeo* and Flotow's *Martha*) with an amateur company and formed an amateur choir which gave concerts in Romania and Yugoslavia. In 1938 he moved to Sofia, where he taught as a school music teacher, and from 1942 until 1945 he studied musicology with Erich Schenk in Vienna. On his return he taught in the same Sofia Gymnasium and, for a short time, music history and solfège at the Sofia Music School. Until 1956 he worked as adviser for the Central House of Folk Art in Sofia. He died in a car accident.

#### WRITINGS

- Ritam i takt v balgarskata narodna muzika* [Rhythm and metre in Bulgarian folk music] (Sofia, 1949)  
*Rabota nad ispalnenieto i agogikata na pesenta* [Work on the performance and accentuation of song] (Sofia, 1953)  
*Balgarskata narodna muzika* [Bulgarian folk music] (Sofia, 1954)  
'Taktovete s hemiolno udalzhneni vremena v zapisite na balgarskite folkloristi' [Types of bars with hemiola lengthening in the notation of Bulgarian folklorists], *IIM*, ii-iii (1956), 319-50 [incl. Russ. and Fr. summaries]  
*Kharakterni ritmi v tvorchestvoto na balgarskite kompozitori* [Characteristic rhythms in the works of Bulgarian composers] (Sofia, 1957)  
*Ornamenti v balgarskata narodna muzika* [Ornaments in Bulgarian folk music] (Sofia, 1961)  
'Struktura i formi na balgarskite narodni pesni' [Structures and forms in Bulgarian folk songs], *IIM*, xv (1970), 5-95  
Numerous articles on folk music and education

LADA BRASHOVANOVA

Motta, José Vianna da. See VIANNA DA MOTTA, JOSÉ.

Exhibit 10

Page 104

Exhibit: B

Page: 18





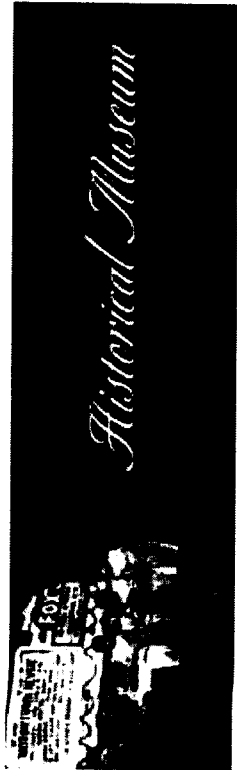


**UMG RECORDINGS, INC. v. MATTEL, INC.  
OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT 11  
TO TRIAL DECLARATION  
OF PETER CAPARIS**





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**Educational**



Studio A Rhinestone  
Dog Tag  
#MHM201



Motown Wristband  
#MHMABD01





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[Men's Hitsville USA](#)

[Motown Label T-](#)

[Shirt](#)

[Marquee T-Shirt](#)

[Studio A T-Shirt](#)

[Motown Label T-](#)

[Shirt](#)

[Tamla Motown T-](#)

[Shirt](#)

**Women's**

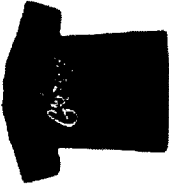
**Drinkware**

**Collectibles**

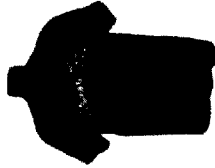
**Caps**

**Lapel Pins**

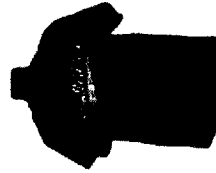
**Educational**



Gordy T-Shirt  
#MHM2000G



Hitsville USA T-Shirt  
#MHM2000H



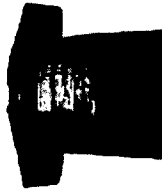
Men's Hitsville USA  
T-Shirt  
#MHM2000H2



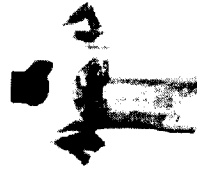
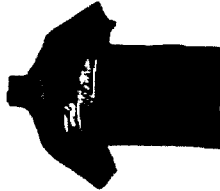
Motown Label T-Shirt  
#MHM2000ML



Hitsville USA T-Shirt  
#MHM2000H1



Marquee T-Shirt  
#MHM2000MQ





Studio A T-Shirt  
(Front Imprint)  
#MHM2000SF

**NEW**

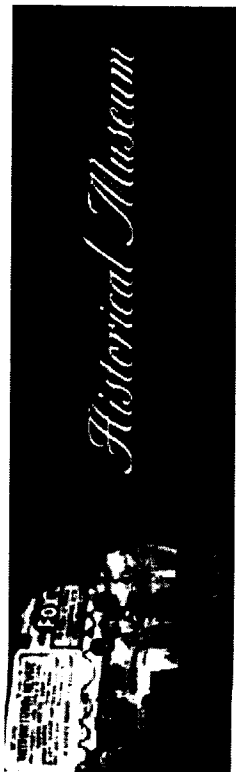
**NEW**

Tamla Motown T-Shirt  
#MHM980T

Motown Label T-Shirt  
#MHM20230W

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"One Motown One  
Heat Changing  
Tumbler  
Motown "M" Logo  
Mug

Motown Copper  
Commuter  
Translucent  
Stainless

Neon Shooter  
DOF Glass Set  
Flip Top  
Polycarbonate

### Collectibles

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## Drinkware



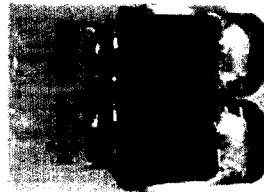
"One Motown One  
Family" Mug  
#MHM1016



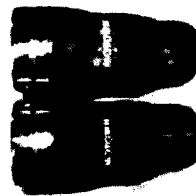
Flip Top Polycarbonate  
Water Bottle  
#MHMVFLP



Motown Copper Commuter  
Mug  
#MHMSM18CS



DOF Glass Set  
(Set of 4)  
#MHMT918



Heat Changing Tumbler  
#MHMHM85S

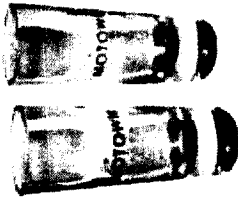


Translucent Stainless  
Steel Travel Mug  
#MHMSVO3PS

NEW

NEW





**NEW**

Neon Shooter  
#MHMT650SB



**NEW**

Motown "M" Logo Mug  
#MHMM639

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Drinkware  
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- [Spinner Record Key Ring](#)
- [Record Magnet \(Singles\)](#)
- [Record Magnet \(Set of 4\)](#)
- [Hitsville House Magnet](#)

Caps

Lapel Pins

Educational



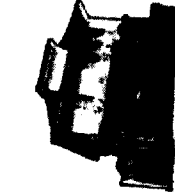
Spinner Record Key Ring  
#MHM204



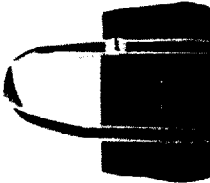
Record Magnet (Singles)  
#MHM218



Record Magnet (Set of 4)  
#MHM219



Hitsville House Magnet  
#MHM227



Fashion Tote  
#MHM182

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## Caps

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### Drinkware

### Collectibles

### Caps

[Motown Studio A Cap](#)

Cap

[Hitsville USA Low Profile](#)

Profile

[MOTOWN Logo Cap](#)

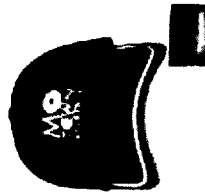
[Motown "M" Fitted](#)

Cap

[Motown M Logo Cap](#)

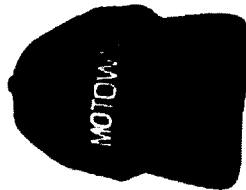
### Lapel Pins

### Educational

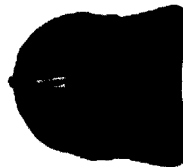


**NEW**

Motown Studio A Cap  
#MHM38429



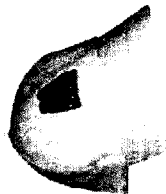
MOTOWN Logo Cap  
(Black)  
#MHM4192M



Motown M Logo Cap  
#MHM4210BM



Hitsville USA Low Profile  
Unstructured Cap  
#MHM4168



**NEW**

Motown "M" Fitted Cap  
#MHM41925M





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## Lapel Pins

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[Motown "M" Lapel](#)

[Soul Lapel Pin](#)  
[Hitsville USA Lapel](#)

[Gordy Lapel Pin](#)  
[Studio A Brass Lapel](#)

[Studio A Full Color](#)  
[Rhinstone Pin](#)  
[Tamla Motown Lapel](#)

### Educational



Tamla Lapel Pin  
#MHM206



Hitsville USA Lapel Pin  
#MHM214



Studio A Full Color  
Lapel Pin  
#MHM223



Motown "M" Lapel Pin  
#MHM207



Gordy Lapel Pin  
#MHM221



Rhinstone Pin  
#MHM224



Soul Lapel Pin  
#MHM213



Studio A Brass Lapel Pin  
#MHM222



Tamla Motown Lapel Pin  
#MHM225

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**Drinkware**

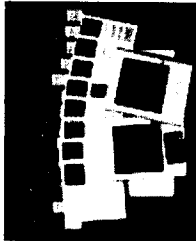
**Collectibles**

**Caps**

**Lapel Pins**

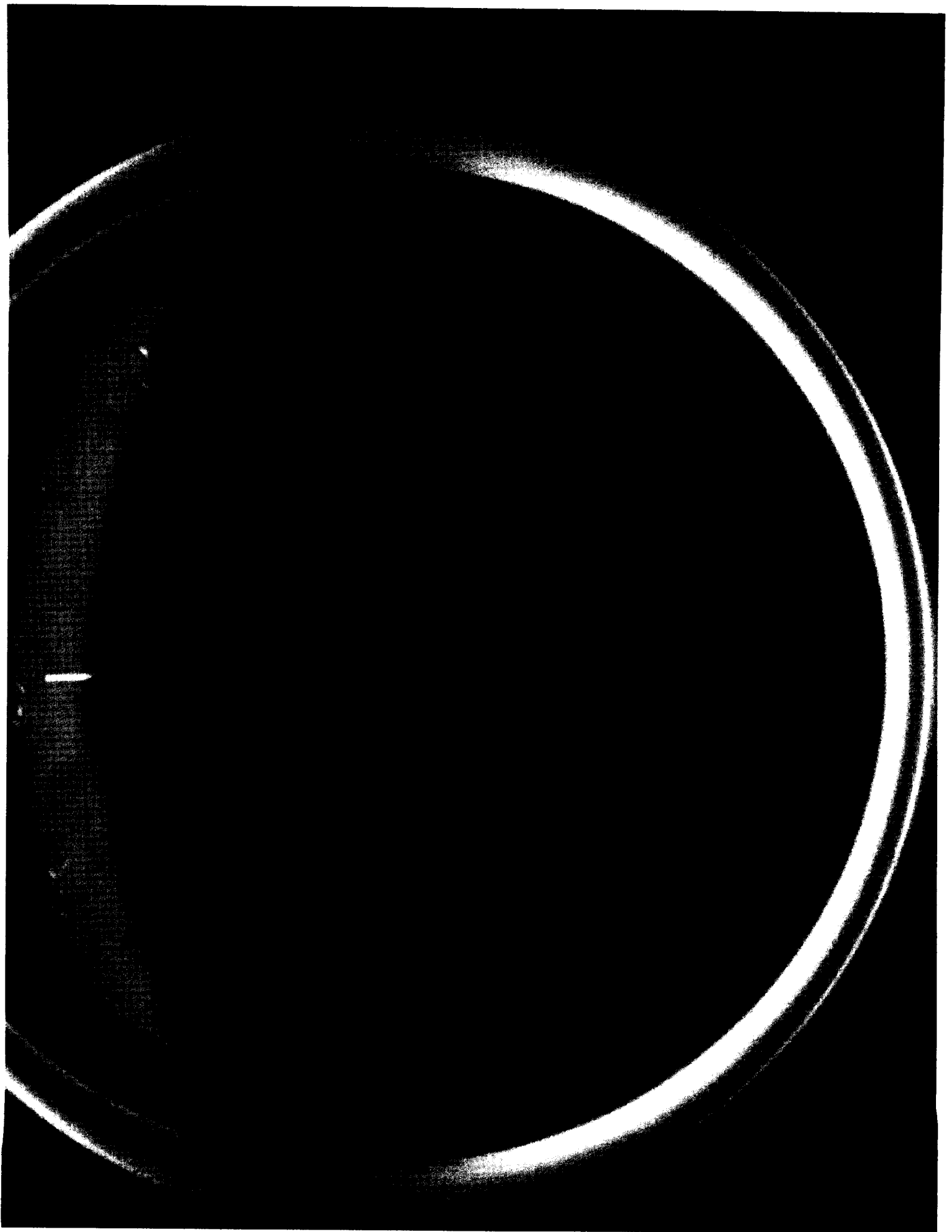
**Educational**

Motown Sound: The Music



Motown Sound: The Music and the Story  
#MHM220











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Motown Records has been home to  
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It represents the ambitions of one  
man, the dreams of a generation, the  
soul of a nation, and the sound  
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**UMG RECORDINGS, INC.**

**EXHIBIT 12  
TO TRIAL DECLARATION  
OF PETER CAPARIS**



# THE SINGING MACHINE

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## Press Release

**The Singing Machine Company and Universal Music Enterprises In Perfect Harmony With Merchandise License Program for Motown**

*February 12, 2003*

Singing Machine to Create Motown-Branded Karaoke Machines and CD+G's Featuring Legendary Motown Music - Scheduled for Summer Launch

The Singing Machine is the world leader in home karaoke systems and you can get our company news [here](#).

The Singing Machine sells the best quality karaoke systems on the market. We have been in business for over 25 years and have millions of satisfied karaoke customers. We have karaoke systems to satisfy any consumer's needs and an excellent Customer Support Team.



Click the logo above to download Adobe Acrobat Reader (required to view PDF documents). This software is available free of charge.

Coconut Creek, Florida, February 12, 2003 The Singing Machine Company (ASE:SMD), a leading manufacturer and distributor of home electronic karaoke equipment, karaoke music and related audio products, announced today that it has signed a multi-year, domestic merchandise license agreement with Universal Music Enterprises and Motown Record Company, divisions of Universal Music Group, to support a line of Motown-branded karaoke machines and music software.

"Motown clearly is the music industry's most recognizable brand name. To be teaming with one of the world's top entertainment brands is a real coup for The Singing Machine Company. We are thrilled with this new program that reflects our strategy to bring exciting, innovative products to large new markets. With this agreement we are targeting music lovers who grew up on the 'Motown Sound' in the 1960's and 1970's, an important and untapped demographic segment with substantial growth potential. We believe that our new Motown-branded karaoke machines and CD+G's (CD with graphics) featuring the unforgettable Motown music will be a hit with young and middle-aged adults, as well as many teenagers who may be introduced to these memorable songs that continue to shape the musical landscape. Because of growth opportunities like the Motown program and the substantial increase in orders from our major customers over last January, we are optimistic that fiscal 2004 will be another year of record revenue and earnings for



Singing Machine," said John Klecha, Chief Operating Officer.

"We are very excited about this innovative program to extend the Motown brand into a new electronics merchandise market segment. Motown Records has left an undeniable mark on our popular culture through its history of groundbreaking music," commented Kojo Benti, Senior Vice President, Motown Record Company.

The first Motown-licensed karaoke machines and CD's+Graphics with music from the Motown music library should be available in stores beginning in Summer 2003. They will be distributed through leading mass merchandisers, discount merchandisers, warehouse clubs, specialty stores, department stores, toy stores, e-commerce, catalogs and direct to consumer sales, music stores, outlet malls and video stores.

"Motown has spent over 40 years earning its reputation as one of the world's top entertainment brands. We are very pleased to have The Singing Machine Company as a licensee for this truly important American icon. They will be one of the key licensees as our overall licensing and merchandising program for Motown takes shape in 2003," said Andy Richmond, Vice President of The Stronghold Group, who is the exclusive licensing agent for UME as it relates to the Motown trademark and who engineered this deal.

"We are all delighted to have The Singing Machine as part of the ongoing merchandising initiative behind the Motown brand. This type of property is a natural fit to bring our music to consumers in innovative ways," said Charlie Katz, Senior Vice President Strategic Marketing, Universal Music Enterprises.

#### About Universal Music Group

Universal Music Group is the world's leading music company with wholly-owned record operations or licensees in 63 countries. Its businesses also include Universal Music Publishing Group, one of the industry's largest global music publishing operations.

Universal Music Group consists of record labels Decca Record Company, Deutsche Grammophon, Interscope Geffen A&M Records, Island Def Jam Music Group, Lost Highway Records, MCA Nashville, MCA Records, Mercury Records, Motown Records, Philips, Polydor, Universal Music Latino, Universal Records, and Verve Music Group as well as a multitude of record labels owned or distributed by its record company subsidiaries around the world. The Universal Music Group owns the most extensive catalog of music in the industry, which is marketed through two distinct divisions, Universal Music Enterprises (in the U.S.) and Strategic Marketing and Commercial Affairs (outside the U.S.). Universal Music Group also includes eLabs, a new media and technology division.

Universal Music Group is a unit of Vivendi Universal, a global media and communications company.

#### About The Singing Machine Company

Incorporated in 1982, The Singing Machine Company produces and distributes a full line of consumer-oriented karaoke machines, CD with graphics machines and CD+G and audio karaoke music under The Singing Machine, MTV and Nickelodeon umbrellas. The company, which is based in Coconut Creek, Florida, was the first manufacturer to offer karaoke electronic recording equipment and audio software for home use in the U.S.

#### About The Stronghold Group

Headquartered in Los Angeles, The Stronghold Group is the nation's premiere entertainment brand management firm, representing artist, athlete, and entertainment property in the areas of brand management, licensing, merchandising,



commercial sponsorships and endorsements, professional representation, event packaging and proprietary product development. Stronghold's services provide artists and entertainment properties with tremendous brand building and brand extension opportunities, in addition to lucrative sources of long-term, ancillary income. The Stronghold Group currently works with music artists such as Dave Matthews Band, Linkin Park, Nelly, Korn, and KISS; entertainment and lifestyle brands such as Motown and Playboy; models such as Victoria Silvstedt and Karen McDougal; and athletes such as extreme sports superstars Daewon Song, Stevie Williams, and street luger Pamela Zooltalian.

Safe Harbor Statements under the Private Securities Litigation Reform Act of 1995.

This press release contains forward-looking statements. Such statements reflect the current views of the Company with respect to future events and are subject to certain risks, uncertainties and assumptions, including but not limited to those relating to product demand, pricing, market acceptance, the effect of economic conditions and other risks identified in the Company's filings with the Securities and Exchange Commission. Although the Company believes that the expectations reflected in such forward-looking statements are reasonable, should one or more of these risks or uncertainties materialize, or should underlying assumptions prove incorrect, actual future results or events may vary materially from those described herein.

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OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT 13  
TO TRIAL DECLARATION  
OF PETER CAPARIS**



**Motown Record Corporation Informational Site**

2648 West Grand Boulevard, Detroit - Wayne County

Other Names Hitsville, U.S.A.

Significant Person Berry Gordy Jr.

Marker Name Motown

Marker Text

MOTOWN The "Motown Sound" was created on this site from 1959 to 1972. The company was started with an eight hundred dollar loan from the savings club of the Bertha and Berry Gordy, Sr., family. Originally called Tamla Records, the company's first national release was "Money (That's What I Want)," in August 1959. The founder, choosing a name that reflected the Motor City, coined the word "Motown" for the company that was incorporated as the Motown Record corporation on April 14, 1960. That same year it produced its first gold record, "Shop Around." In 1968 the company, which had grown from a family-oriented business to an international enterprise, moved its business operations to 2457 Woodward. Motown provided an opportunity for Detroit's inner-city youth to reach their full potential and become super stars. SIDE TWO By the end of its first decade, Motown was the largest independent manufacturer of single 45 rpm records in the world. Among Motown's record labels were Tamla, Motown, Gordy, Soul, VIP, Rare Earth, Black Forum, Workshop Jazz, Divinity and others. In 1972, Motown moved its headquarters to Los Angeles, California. The company expanded its television productions and entered the motion picture industry. Lady Sings the Blues, Motown's first feature length film, received five Academy Award Nominations. By 1975, Motown Industries was the largest black-owned corporation in the world. In 1980 the Motown Historical Museum was established at Hitsville U.S.A. to commemorate the Motown Sound and to memorialize Motown's distinctive heritage and its global impact.

Period of Significance 1959-1968

Significant Date(s) 1959, 1968, 1972, 1985

Registry Type(s) 11/11/1987 Marker erected  
08/21/1987 State Register listed

Site ID# P25185



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OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT 14  
TO TRIAL DECLARATION  
OF PETER CAPARIS**



CRAIN'S  
DETROIT BUSINESS**BERRY GORDY JR.(helped the social landscape of Detroit)**

Article from: *Crain's Detroit Business* Article date: November 1, 1999 Author: Kosseff, Jeffrey

Nashville has country music. Chicago has the blues. New Orleans has Dixieland. Seattle has grunge.

And Detroit will always identify itself with Motown, the 40-year-old record label that set new standards for black performers in the record industry and the rest of the business world.

Motown was the vision of Berry Gordy Jr., a former automotive worker who founded the Detroit company with an \$800 loan from his parents in 1959.

Over the next decade, Gordy produced countless black superstars, including The Four Tops, Gladys Knight and the Pips, and the Temptations.

Motown is an important part of Detroit's worldwide reputation, said Mike Smith, an archivist at Wayne State University's Walter Reuther Library.

"If you refer to Detroit as Motown, everyone knows what you're talking about," Smith said. "It was a particular type of music that put Detroit on the map."

Before Motown, record companies did not give black musicians equal treatment, said local historian Norman McRae, a member of the Detroit Historical Commission. "Prior to Berry Gordy, blacks in the music business were horribly exploited. He came along and entered into a field where no blacks had gone before," McRae said.

Many of Motown's stars came from the arts program at Detroit Public Schools, McRae said.

"He established a company where local people could write music and learn the technical skills of making records," McRae said.

After he recruited talented musicians, he shaped their image by telling them how to dress and act.

Gordy established Motown at the beginning of the civil-rights movement, and he had to fight racial prejudice to become successful.

"It developed in a unique decade, with civil rights and civil disorder," Smith said. "And during the civil-rights movement, you see more and more African-Americans in music."

Besides providing a training ground for talented black musicians, Gordy was a successful black businessman whom many people admired, said David Lewis, a University of Michigan business professor.

"He was a fine, decent man," Lewis said. "He looked after his employees and was a



role model who African-Americans could take great pride in."

To be closer to the center of the music business, Gordy moved Motown to Los Angeles in 1972.

"It was certainly a bit of a blow to Detroit," Smith said. "At that time, you had a tremendous flight of people out of Detroit. You had the de-industrialization of the city. It's an example of when things moved out of Detroit."

Gordy has donated \$3.5 million toward converting the former Motown Center headquarters on Woodward Avenue into a Motown museum complex. The project is expected to cost between \$21 million and \$23 million.

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OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT 15  
TO TRIAL DECLARATION  
OF PETER CAPARIS**

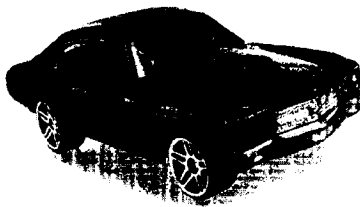




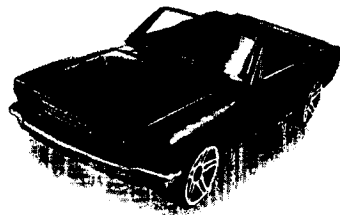
collector guide



*July - August*



❑ 1970 Chevelle® SS™ #086



❑ 1965 Mustang Convertible #087

*Muscle Cars Series*





❑ 1970 Plymouth® Road Runner #088

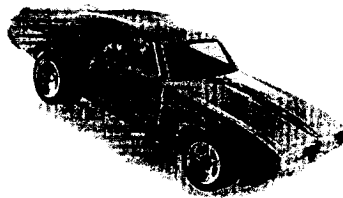


❑ 1967 Camaro® #089

*July - August*



*July - August*



□ 1969 Pontiac® GTO® Judge™ #090

*Muscle Cars Series*



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**EXHIBIT 16  
TO TRIAL DECLARATION  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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UMG RECORDINGS, INC., )

)  
Opposer, )

)  
vs. )

) Opposition No.: 91176791

)  
MATTEL, INC., )

)  
Applicant. )  
-----x

DEPOSITION OF RAYMOND ADLER  
Los Angeles, California  
Tuesday, July 22, 2008

Reported by:

SUSAN A. SULLIVAN, CSR #3522, RPR, CRR

JOB NO. 17818



RAYMOND ADLER

Q Okay. Was it distributed in any other way?

A Again, sometimes we would -- we would ship some to specific retail stores for Hot Wheels events and then we may have offered it on line as well. I'm not a hundred percent sure.

Q Would one of these posters exist for 2007 as well?

A Yes.

MS. LEWIS: Counsel, I would like to represent that we don't have one of these for 2007. To the extent that a 2007 poster exists that's responsive to the discovery request we propounded, we would like a copy of it.

MR. ISER: So noted.

Q Do you see the words "Motown Metal" anywhere on this poster?

A No.

Q What is the -- you earlier indicated that the Motown Metal products are the items surrounded in light blue. Is there a series name associated with those items?

MR. ISER: Object that the question is vague and ambiguous.

A On the 2006 poster the series name is



1 RAYMOND ADLER

2 designated the muscle car series.

3 Q Do you know when this poster was  
4 manufactured?

5 A I don't.

6 Q Do you know when this poster was designed?

7 A It had to be mid to probably -- probably  
8 mid to late 2005.

9 Q Do you know why they were called muscle  
10 cars as opposed to Motown Metal?

11 A Only -- no, no.

12 Q So this poster was being distributed then  
13 in 2006, correct?

14 A Yes.

15 Q You can fold that up and put it to one  
16 side.

17 And I would like to refer you to a document  
18 that's been marked as Exhibit 4. Have you seen this  
19 document before?

20 A Yes.

21 Q What is it?

22 A It is our 2006 collector guide.

23 Q What's the purpose of the collector guide?

24 A Just another more pocket form of  
25 communicating our 2006 line of Hot Wheel basic cars.

Exhibit 16

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RAYMOND ADLER

1

2

A Yes.

3

4

Q Okay. Still focusing on the bottom E-mail, if you could just read the one-line body of that E-mail.

5

6

7

8

A "Hi Team, Please provide me the icon for the Muscle Car Segment and the cleared segment name by 203. Thanks and regards, Richard."

9

10

Q Do you know what he means by the icon for the Muscle Car Segment?

11

A Yes. If we go -- sorry.

12

Q Sure. Which do you need?

13

14

A Five. So in Exhibit 5, this right here is the icon.

15

16

17

18

Q So you are pointing at -- sorry, because we won't know what gestures are on the record -- you are pointing to APP 3 and you are referring to the image that is next to the words "Motown Metal."

19

A Yes.

20

Q To the right of it.

21

A Yes. The "M" with flames.

22

Q And who designed that icon?

23

A I don't know.

24

25

Q And when it says "cleared segment name," what does that mean?



RAYMOND ADLER

order and we fulfill that order.

Q And when you are referring to an account registered to sell Mattel products, do you mean -- what do you mean by an account?

A A retail store.

Q Anything else?

A It could be. I'm not sure.

Q How do the accounts place their orders?

A I don't know. Unless maybe I'm misunderstanding you.

MR. ISER: You are not.

Let me just object that the question is beyond the scope of the topics for examination.

Q When an account places an order for Mattel products does -- well, hang on.

When an account places an order for Hot Wheels Basic Cars, does it place that order for Hot Wheels Basic Cars in general or does it say, "I want" -- "I want the Motown Metal Segment"?

A Hot Wheels cars in general. I don't -- all of our cars are sold under what's called an assortment.

Q What does that mean?

A It means when you order a standard case of

Exhibit 16

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RAYMOND ADLER

basic cars, you don't know which cars will be inside.

Q How does Mattel determine what's going to be in a case?

A Generally through Marketing.

Q How does Marketing make that determination?

A Usually based on, you know, research information, other factors that we need to make sure that we're getting -- sorry. Cost concerns, things of that nature.

Q How many cars -- well, how many -- do the cases contain individual packages of cars?

MR. ISER: Object that the question is vague.

Q Well, you referred to a case earlier. What is that?

A Generally it means 72 basic cars come in a case generally.

Q And, generally speaking, will those be 72 different basic cars?

A No, usually there's -- there can be more than one of the same car in a box.

Q Are there usually subgroups in each box of a certain number?

MR. ISER: Object that the question is



RAYMOND ADLER

vague and compound.

A No.

Q You mentioned that the toys are sold in retail stores. Which ones?

A Many. We sell our Hot Wheels Basic Cars in a lot of retail stores. I can, you know --

Q Give me some examples.

A WalMart, Target, Toys "R" Us, Kmart, KB.

Q Anywhere else?

A Tons of other places. I don't necessarily know for sure.

Q Do you know for sure of any other particular ones?

A Drugstores, grocery stores. But, again, not necessarily specifically.

Q So are you saying you know they're sold in grocery stores but you don't know that they're sold in a Pavilions?

A Right.

Q Is that true for Motown Metal toys as well?

MR. ISER: Object that the question is vague.

A All of our basic car -- all of the cars in our basic car line which include the Motown Metal

Exhibit 16

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RAYMOND ADLER

Segment would have been sold in all of those places.

Q Were the Motown Metal toys sold in catalogues?

A Not that I know.

MR. ISER: The question is vague.

A Not to my knowledge.

Q Were the Hot Wheels basic toys sold in catalogues?

A Not to my knowledge.

Q Were the Motown Metal toys sold on the internet?

MR. ISER: Object that the question is vague.

A Not -- not to my knowledge directly by Mattel.

Q It is possible that third parties sold Motown Metal toys on the internet?

MR. ISER: Objection; calls for the witness to -- the form of the question calls for speculation, lacks foundation for the witness.

If you can respond without guessing, that's fine.

A Yeah. I don't know.

Q Is it fair to say that the Hot Wheels basic

Exhibit 16

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RAYMOND ADLER

dislike and know what vehicles they have and don't have. Kids choose basic cars on a different set of criteria.

Q Do you know what those criteria are?

A Generally the shape of the vehicle is the most important to kids, followed by the color of the vehicle.

Q How do you know that?

A We do consumer research.

Q Do purchasers tend to have favorite Hot Wheels Basic Cars?

MR. ISER: Objection. The question is vague, lacks foundation, is compound, calls for the witness to speculate.

A I don't know.

Q Do purchasers research Hot Wheel Basic Cars prior to purchase?

MR. ISER: Object that the question is vague, it is compound, lacks foundation, calls for speculation.

A I don't know other than to say, you know, adult consumers might.

Q Do you know if customers associate Motown Metal with Mattel?



**UMG RECORDINGS, INC. v. MATTEL, INC.  
OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

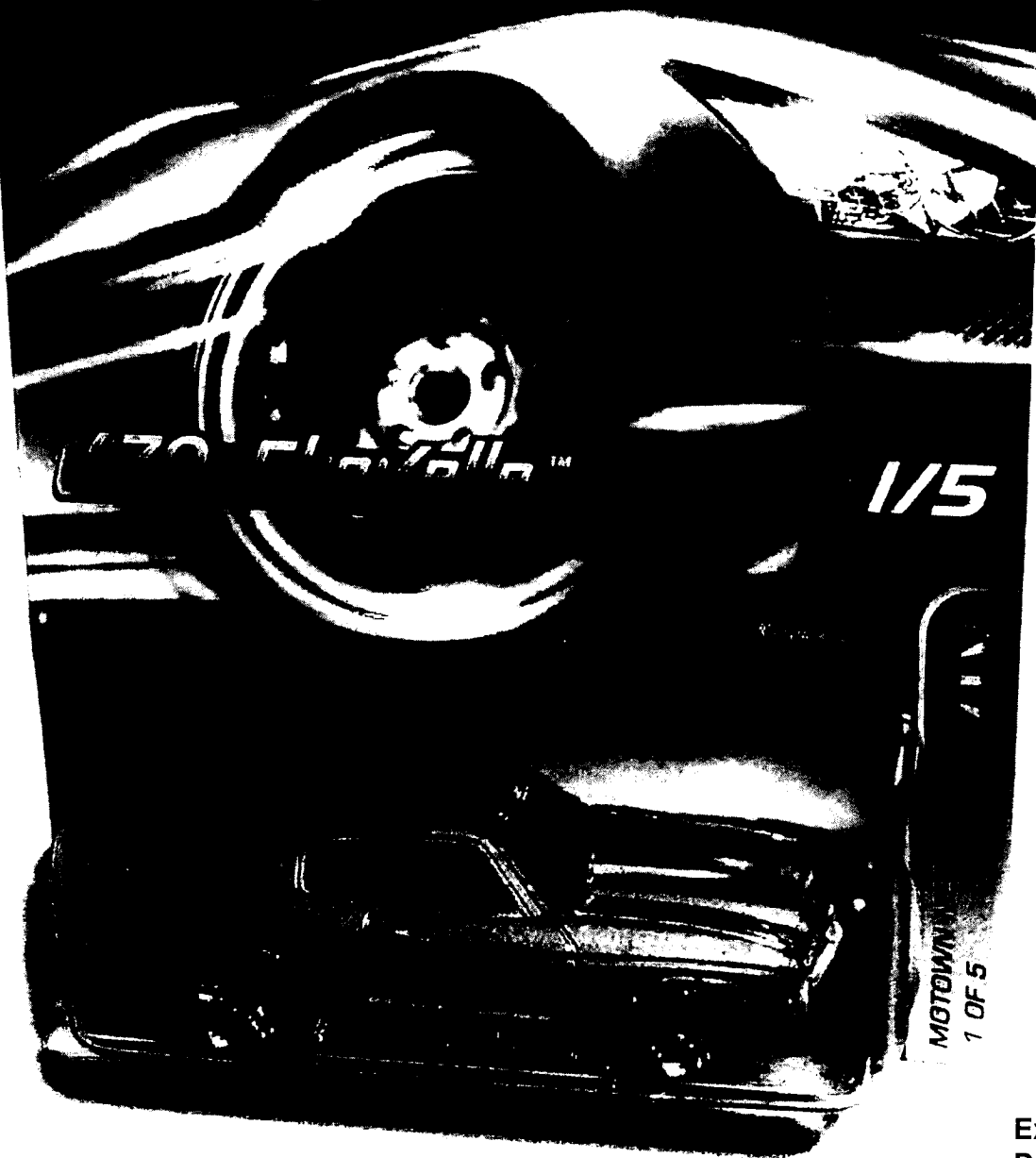
**EXHIBIT 17  
TO TRIAL DECLARATION  
OF PETER CAPARIS**



J3412

086

**HotWheels.**



**1/5**

MOTOWN  
1 OF 5

Exhibit 17  
Page 137

APP 002



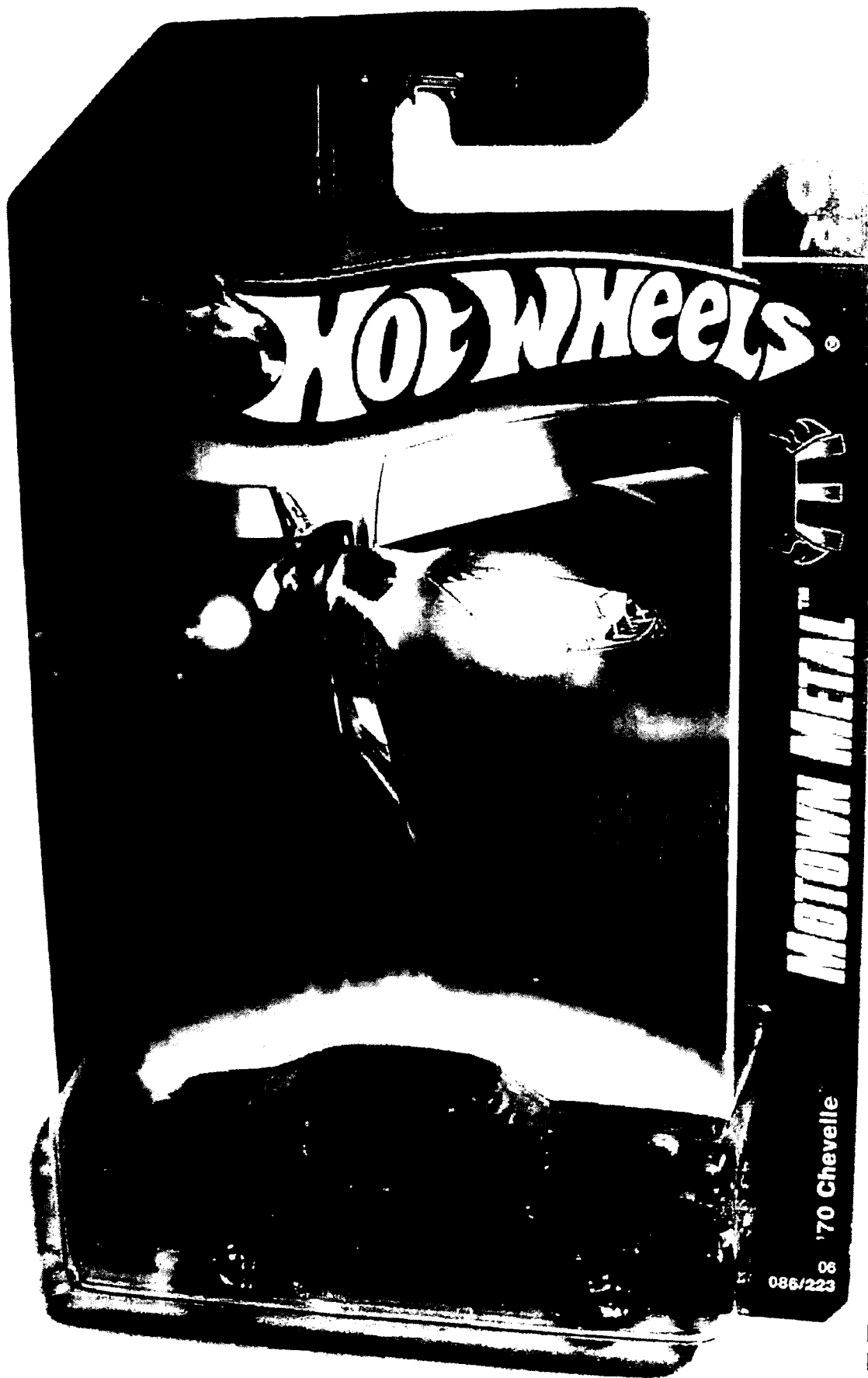


Exhibit 17  
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APP 017



**UMG RECORDINGS, INC. v. MATTEL, INC.  
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**EXHIBIT 18  
TO TRIAL DECLARATION  
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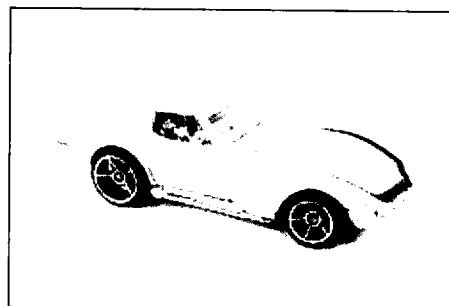



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## License to Collect: Kmart Collector Days!

Give Dad Something to Rave About

by **HWC Kelly**  
06-02-06



Kmart Collector Days celebrates Dad. On **Saturday, June 17, 2006** -- Father's Day Eve -- the floodgates will open for dads, their kids and any other type of Hot Wheels® collector. So hold off on cards that call out Dad's remote control hoarding because Kmart has the ultimate Father's Day gift for Pops: the **Hot Wheels® License Plate Bundle**.

### Event details:

What: **Kmart Collector Days event**

When: **Saturday, June 17, 9:00 AM local times**

Where: **All continental US Kmart, and participating Sears Essentials and Sears Grand stores, and (in TX only) Sears Mall stores**

Just what is the **License Plate Bundle** you ask? Let's just say, now, when you're stuck in traffic -- everyone will know a Hot Wheels® collector is behind the wheel. That's because your license plate holder will boast, "**My Other Car is a Hot Wheels®.**" But public declaration isn't the end of it -- you'll also find in the bundle two randomly chosen basic cars to add to your collection.

And we wouldn't let you down -- as usual, exclusive mixes will be on hand for this event! Look for three **Exclusive Colors** and three **First-to-Market** cars in the mixes. Check out these jaw-dropping editions:

### Exclusive Colors:

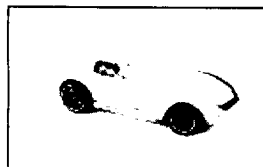
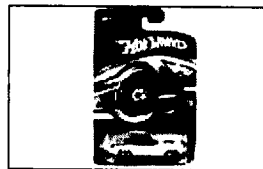
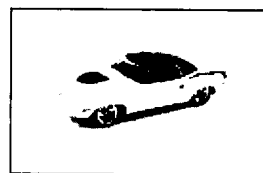
- **1970 Plymouth® Barracuda (MOPAR Madness™)**
- **'69 Corvette® (2006 First Editions™)**
- **1970 Chevelle® SS™ (Motown Metal™)**

### First-to-Market:

- **1969 Pontiac® Firebird® (Red Line™)**
- **1967 Camaro® (Motown Metal™)**
- **Scorchin' Scooter® ("Secret" segment)**

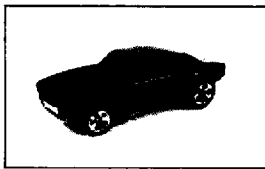
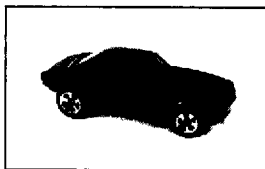
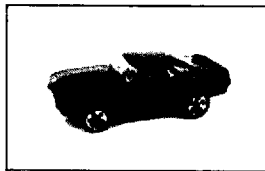
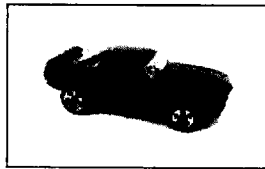
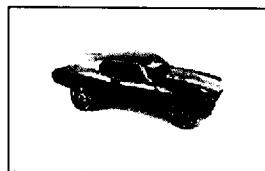
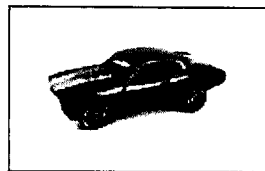
Kmart's not the only one hosting this drool-worthy event. Sears Essentials and Sears Grand stores are also fortunate enough to welcome us collecting enthusiasts. And if you happen to live in Texas, mosey on over to a Sears Department Store near you.

So either consider **Saturday, June 17**, a perfect day to go Father's Day shopping, or a perfect opportunity to spend some QT with the old man... or the kids... or any collectors in the family...

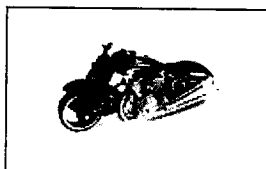


**Exhibit 18**  
**Page 139**









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There are just as many long-established classics that are almost universally adored,

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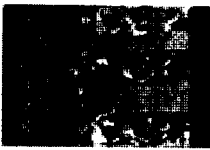


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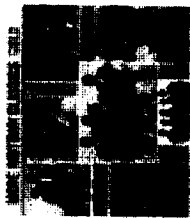
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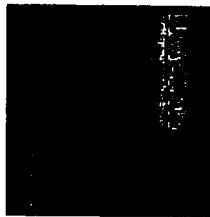
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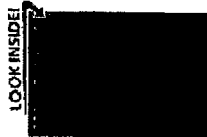
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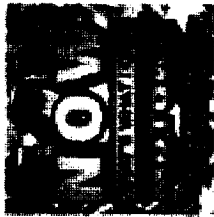
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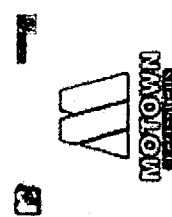
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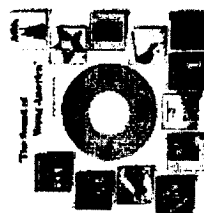




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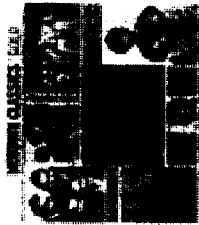
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Artists  
★★★★☆ (9) \$169.98

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Home > Buy > Music > Search results for "motown"

Find motown

☐ Include title and description

Related Searches: browse this category

in Music

Search

[ Advanced Search ]

### Refine search

#### Categories

##### Music

CDs (1,327)

Records (1,044)

Wholesale Lots (51)

Cassettes (20)

Other Formats (12)

DVD Audio (1)

Accessories (1)

##### Price

\$  to \$

##### Condition

New

Find motown in:

Music CDs (1,315)

Records (980)

All items Auctions only Buy It Now only

2,484 results found for motown [ Save this search ]

View as

List [ Customize view ]

Sort by:

Best Match

Price

Time L



1970 Motown The Jackson 5" I'll Be There" 45 Record

0 Bids

\$9.99



MOTOWN LEGENDS THREE TIMES A LADY THE COMMODORES NEW CD

Buy It Now

\$3.03 25d 14h 27





Used  
Not specified  
Choose more...

Seller  
Specify sellers...

### Preferences

Buying formats

Auction

Buy It Now

Include Store inventory

Choose more...

Show only

Completed listings

Free shipping

Choose more...

Location

US Only

North America

Worldwide

Choose more...

Distance

Customize preferences

Matching eBay Stores

Red Tag Market (142)  
WHITE ELEPHANT MEDIA (10)

Exhibit 18  
Page 154

	THE PRODUCERS RADIO SHOW "Motown" Canadian Produced	1 Bid	\$5.98	3
	1 CENT CD Motown - Michael McDonald SEALED	2 Bids	\$1.25	25
	1 CENT CD VA Motown Vol. 2: Number 1's SEALED/ Miracles	4 Bids	\$1.30	26
	1 CENT CD VA Motown Legends Vol. 2 SEALED 4 tops/wonder	1 Bid	\$0.01	27
	1 CENT CD VA Motown Anniversary Collection SEALED	1 Bid	\$0.01	28
	ISLEY BROTHERS Rare 60's Motown Northern Soul 45 HEAR	0 Bids	\$4.99	47
	Evolution by Boyz II Men (CD, Sep-1997, Motown Records)	0 Bids <i>Buy It Now</i>	\$0.01 \$3.00	50



NorthKeyMovies (98)  
SupermartUSA (102)

See all matching eBay Stores

### Recently viewed items

The Motown Story  
by D...

**\$20.00**  
2d 7h 18m

PS3 Singstar  
Motown G...

**\$27.50**  
6d 20h 7m

MOTOWN  
RECORDS LOGO ...

**\$2.25**  
15h 25m

ADVERTISEMENT (about)



WAYLON - WICKED WAYS (MOTOWN RELEASE)  
12 TRACK CD 2009

**Buy It Now**

**\$34.99**  
Free  
shipping

15d 15h 47

SOUL Right Choice Tired Of Being Alone Motown  
1931 M-

0 Bids

**\$4.99**

5d

US MOTOWN MARTHA & VANDELLAS MY BABY  
LOVES ME PIC/SLE

0 Bids

**\$8.32**

1h 7

THE MIRACLES~ NIGHT LIFE~ 1975 UK TAMLA  
MOTOWN SINGLE

0 Bids

**\$4.98**

1h 7

YOU HAVE INSPIRED ME~MIRA  
WATERS~MOTOWN~12\"/>

0 Bids

**\$4.99**

1h 3d

OBSCURE 70's MOTOWN MODERN SOUL FUNK  
BOOGIE 45 Hear It

0 Bids

**\$6.99**

2h 6



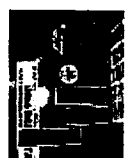

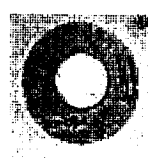

SCATMAN CROTHERS BIG BEN SINGS LP WLP

0 Bids

**\$5.00**

2h 1d



MOTOWN			
	(54) 1950s-60s MOTOWN Hit Records LOT BERRY DELFONICS	8 Bids	\$56.77 2h 4c
	WAYLON - WICKED WAY (MOTOWN RELEASE!) 3 TRK CD SINGLE	<del>Buy It Now</del>	\$12.99 5d 12h 4c Free shipping
	rare stevie wonder lp VG+++ 1981 reissue motown LBL	0 Bids	\$6.00 2h 4c
	Motown Celebrates Sinatra CD MICHAEL JACKSON V. Artists	0 Bids	\$9.99 3h 1c
	NORTHERN MOTOWN 1000 THE SATINTONES HEAR IT	1 Bid	\$9.99 3h 1c Free shipping
	NORTHERN MOTOWN 1010 THE SATINTONES HEAR IT	0 Bids	\$9.99 3h 2c Free shipping
	NORTHERN MOTOWN 1006 THE SATINTONES HEAR IT	0 Bids	\$9.99 3h 2c Free shipping





Box Lot of 15 Vintage Vinyl Records! Rock MoTown  
Disco

Diana Ross & The Supremes 2 Motown 60's Soul  
LPs

1 Bid

\$0.99

3h 28

0 Bids

\$4.00

3h 36

Picture size: ☐ ☒

Page 1 of 100

Previous 1 | 2 | 3 | 4 | 5 | 6 | 7 Next

Go to page

Items per page: 25 | 50 | 100 | 200

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##### Motown Oldies

Get Free Music Downloads. 100% Legals - Select From All The Oldies.  
[www.EZ-Tracks.com](http://www.EZ-Tracks.com)

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Get Free Music Downloads Today. Huge Selection. No Fees.  
[www.FreeMusicConnection.com](http://www.FreeMusicConnection.com)

##### Free Listen Music

Listen To Music & Radio On The Web. With Free Music Toolbar.  
[Music.Inbox.com](http://Music.Inbox.com)

##### Motown Music from the 70's

Best Brand Name Catalogs at CatalogLink.  
[www.CatalogLink.com](http://www.CatalogLink.com)

##### The Motown Collection CDs By Time Life

10 CD+DVD Set \$109.99 or 18 CD+DVD Set \$189.99. Fast, Free Shipping.  
[www.discsforless.com](http://www.discsforless.com)





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See participating California reseller for details. Take delivery by 09/30/09.

Home > Buy > Toys & Hobbies > Search results for "motown metal"

Find

in

Search

[ Advanced Search ]

☐ Include title and description

Related Searches: browse this category

### Refine search

#### Categories

Toys & Hobbies

Diecast Toy Vehicles (12)

In Diecast Toy Vehicles

Sub Type

Condition

Price

Brand

All items Auctions only Buy It Now only

12 results found for motown metal [ Save this search ]

View as

List [ Customize view ]

Sort by: Best Match

Price Time L



hot wheels motown metal 67 camaro

Buy It Now

\$1.00 6d 22h 7



2007 1/5 MOTOWN METAL 70 CHEVELLE 5/S  
RIMS HTF

0 Bids

1h 15

### Preferences

Buying formats

HW 67 Camaro - #089 Motown Metal Series from  
2006

0 Bids

\$0.99 1d 4h 46



Auction

Buy It Now

Include Store inventory

Choose more...

Show only

Completed listings

Free shipping

Choose more...

Location

US Only


North America

Worldwide

Choose more...

Distance

Customize preferences

 Matching eBay Stores

WE TRY FOR SAME DAY  
SHIPPING (1)  
whelsrus (1)

See all matching eBay Stores

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The Motown Story  
by D...

\$20.00  
2d 7h 21m

Exhibit 18  
Page 159

http://toys.shop.ebay.com/i.html?\_nkw=motown+metal&\_sacat=220&\_trksid=p3286.m270.11313&\_dmpt=Diecast\_Vehicles&\_odkw=... 9/11/2009



Hot Wheels 06 #86 Motown Metal 1970/70 Chevelle  
5 Spoke

Buy It Now

\$3.95

12d 21h 15



Hot Wheels Chevelle set - First Editions & Motown  
Metal

0 Bids

\$0.99

1d 18h 35



HW 2006 #087 MOTOWN METAL 1965 MUSTANG  
CONVERTABLE

Buy It Now

\$1.99

25d 3h 10



HOTWHEELS 70' CHEVELLE!!! MOTOWN  
METAL!!!!

0 Bids

\$0.99

2d 5h 14



VHTF '06 HWS MOTOWN METAL 4/5 '67  
CAMARAO 2 VARATIONS

0 Bids

\$1.99

3d 6h 17

Buy It Now

\$5.95



2006 HotWheels Motown Metal '67 Camaro

0 Bids

\$0.89

3d 7h 12



HOT WHEELS 2006 MOTOWN METAL 67  
CAMARO 5Y #089

Buy It Now

\$3.49

21d 5h 15

1970 PLYMOUTH ROAD RUNNER (HW 2006  
MOTOWN METAL #88)

0 Bids

\$0.79

5d 20h 22



PS3 Singstar  
Motown G...

**\$27.50**  
6d 20h 9m



Hot Wheels MOTOWN METAL '65 FORD  
MUSTANG Blue

1 Bid

**\$1.90**

6d 17h 2

MOTOWN  
RECORDS LOGO ...

**\$2.25**  
15h 28m



Hot Wheels 2006 Motown Metal 086 '70 Chevelle mf  
bt Red

**Buy It Now**

**\$3.49**

Store: JIMPCollectible Hot Wh...

ADVERTISEMENT (about)



2006 Hotwheels Motown Metal series #1/5 '70  
CHEVELLE

**Buy It Now**

**\$2.25**

Store: Igothotwheelfever's B...



Hot Wheels 2006 Motown Metal 089 67 Camaro  
Black 5spENG

**Buy It Now**  
or Best Offer

**\$30.00**

Store: JIMPCollectible Hot Wh...



HOT WHEELS '65 MUSTANG MOTOWN METAL  
M

**Buy It Now**

**\$2.35**

Store: Cynptom Toys



2006 Motown Metal '70 Chevelle

**Buy It Now**  
or Best Offer

**\$1.50**

Store: ricksmodlehotrodshop

**Buy It Now**





2006 Hotwheels HW Motown Metal Series '67 Chevy Camaro

Store: baseball cards and di...

**P**

**\$1.99**

---



Hot Wheels 2006 Motown Metal '65 Mustang 087 RED K MART

Store: JMPCollectible Hot Wh...

**P**

**Buy It Now**

**\$5.99**

---



Hot Wheels 2006 Motown Metal 086 '70 Chevelle mf Grey

Store: JMPCollectible Hot Wh...

**P**

**Buy It Now**

**\$3.99**

---



HOTWHEELS '67 CAMARO BLACK MOTOWN METAL BABY!!!!

Store: Shadzwhheels

**P**

**Buy It Now**

**\$1.49**

---



2002 Hot Wheels #089 MOTOWN METAL - '67 CAMARO -S/H DIS

Store: the HOTT SHOPPE

**P**

**Buy It Now**

**\$1.20**

---



2006 HW Motown Metal '67 Camaro 4/5 # 89 (black)

Store: Dinkylannd

**P**

**Buy It Now**

**\$4.99**

---



HOT WHEELS (2006)BLACK '70 CHEVELLE (MOTOWN METAL)PR5

Store: ERIN'S WHEELS

**P**

**Buy It Now**

**\$3.25**

---



HOT WHEELS, "MOTOWN METAL", '69 PONTIAC GTO, #5 OF 5

Store: cykodiecast

**P**

**Buy It Now**

**\$3.00**

---





HOT WHEELS 2006 MOTOWN METAL '65  
MUSTANG CLEAR WINDOWS

Store: CAR WORLD by CHRIS

**P**

**Buy It Now**

**\$2.39**

---



HOT WHEELS (2006)'65 MUSTANG (MOTOWN  
METAL)

Store: ERIN'S WHEELS

**P**

**Buy It Now**

**\$3.25**

---



HOT WHEELS (2006) BLACK '67 CAMARO  
(MOTOWN METAL) 5Y

Store: ERIN'S WHEELS

**P**

**Buy It Now**

**\$3.25**

---



2006 NEW HOTWHEELS 1970 CHEVELLE  
MOTOWN METAL 1/5

Store: 19chente64 TOYS AND M...

**P**

**Buy It Now**

**\$2.50**

---



2006 MOTOWN METAL HOTWHEELS 65  
MUSTANG #02

Store: LESSRON CARDS STORE

**P**

**Buy It Now**

**\$6.19**

Free  
shipping

---



Hot Wheels 69 Pontiac GTO yellow 2006 Motown  
Metal HTF

Store: Bryan's Die-Cast Cars

**P**

**Buy It Now**

**\$1.45**

---

HOT WHEELS (2006)'69 PONTIAC GTO  
(MOTOWN METAL)

Store: ERIN'S WHEELS

**P**

**Buy It Now**

**\$3.25**

---





Hot Wheels 2006 #86 70 Chevelle Motown Metal

Store: LouLou and Thomas

**Buy It Now**

**\$2.95**

---

HOTWHEELS MOTOWN METAL 70  
CHEVELLE\*\*\*NEW MUST SEE\*\*\*

Store: TOYS FOR THE YOUNG AT...

**Buy It Now**  
or Best Offer

**\$2.99**

---

HOT WHEELS (2006) '65 MUSTANG (MOTOWN  
METAL)PR5 \*\*\*

Store: ERIN'S WHEELS

**Buy It Now**

**\$3.00**

---

HOT WHEELS '69 PONTIAC GTO 2006 MOTOWN  
METAL

Store: HOT WHEELS CLASSICS

**Buy It Now**

**\$3.00**

---

HW 2006 #090 MOTOWN METAL PONTIAC GTO  
MONMC

Store: WE TRY FOR SAME DAY S...

**Buy It Now**

**\$1.00**

---

HOT WHEELS (2006) '67 CAMARO (MOTOWN  
METAL)5SP \*\*\*

Store: ERIN'S WHEELS

**Buy It Now**

**\$3.00**

---

K-MART 2005 HOT WHEELS '65 MUSTANG  
MOTOWN METAL RED MOC

**Buy It Now**

**\$7.75**

Free





Store: 925 Sterling Silver T...

shipping



HOTWHEELS MOTOWN METAL RED '70  
CHEVELLE 2006 CAR

Store: GUMBALL ALLEY

**Buy It Now**

**P**

**\$2.99**



HOT WHEELS '1970 CHEVY CHEVELLE 2007  
MOTOWN METAL

Store: HOT WHEELS CLASSICS

**Buy It Now**

**P**

**\$3.00**



Hot Wheels '65 MUSTANG Motown Metal 5  
SPOKES VHTF MOC

Store: 925 Sterling Silver T...

**Buy It Now**

**P**

**\$14.75**  
Free  
shipping



HOTWHEELS 'MOTOWN METAL '70 CHEVELLE  
2006 CAR

Store: GUMBALL ALLEY

**Buy It Now**

**P**

**\$2.99**



06 HOTWHEELS MOTOWN METAL #90 '69  
PONTIAC GTO

Store: The Busy Monkey

**Buy It Now**  
or Best Offer

**P**

**\$1.50**



06 HOTWHEELS MOTOWN METAL #88 '70  
PLYMOUTH ROAD RUNNER

Store: The Busy Monkey

**Buy It Now**  
or Best Offer

**P**

**\$1.50**

**Buy It Now**





**P**

Hot Wheels 2006 Motown Metal 087 65 Mustang  
Blue CW VAR

Store: JMPCollectible Hot Wh...

**\$3.99**

---



**P**

HW 2006 #089 MOTOWN METAL 1967 CAMARO  
BLACK

Store: WE TRY FOR SAME DAY S...

**Buy It Now**

**\$1.50**

---



**P**

Hot Wheels 2006 Motown Metal 090 '69 Pontiac  
GTO 5sp

Store: JMPCollectible Hot Wh...

**Buy It Now**

**\$2.99**

---



**P**

Hot Wheels '67 Camaro MOTOWN METAL 4/5 2006  
NEW MOC

Store: 925 Sterling Silver T...

**Buy It Now**

**\$8.85**  
Free  
shipping

---



**P**

HOT WHEELS (06) '70 CHEVELLE (MOTOWN  
METAL) +=

Store: ERIN'S WHEELS

**Buy It Now**

**\$3.50**

---



**P**

HOT WHEELS (06) '70 CHEVELLE (MOTOWN  
METAL) IWP +=

Store: ERIN'S WHEELS

**Buy It Now**

**\$3.25**

---



**P**

HOT WHEELS FORD MUSTANG 65 1965 2 OF 5  
MOTOWN METAL 06

Store: MAN OF ACTION FIGURES

**Buy It Now**  
or Best Offer

**\$3.99**

---

\*\*\*\*\*2006 '65 Mustang(Motown Metal) in 3

**P**

**Buy It Now**

**\$6.60**

---



Colors\*\*\*\*\*

Store: FROM AGES 8 THRU 88 Y...



Hot Wheels 2006 Motown Metal 089 67 Camaro 5Y  
2006 Card

Store: JMPCollectible Hot Wh...

\$2.99

Buy It Now



---



HOT WHEELS MOTOWN METAL 1965 65  
MUSTANG VARIATION RARE!

Store: Treasure Valley Toy B...

\$49.99

Buy It Now  
or Best Offer



---

Showing 43 of 43 items found in eBay Stores

Picture size: ☐ ☒ ☐

Page 1 of 1

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Search results for motown - Walmart - Microsoft Internet Explorer provided by MSK

Address: http://www.walmart.com/search/search-ng.do?ic=48\_08search\_query=motown&search\_constraint=08search\_sort=68ref=501457.501458&tab\_value=61\_Store

Walmart  
Save money. Live better.

See All Departments

Narrow Search Results

Departments

Music

Music DVD's (3)

R&B / Soul (6)

Price

0 - \$10 (1)

\$10 - \$20 (6)

Customer Rating

4 - 5 Stars (1)

Expand Search Result

Remove Filter

501 Items

\* Store Items

See All Results

Shop College 09

Entire Site

motown

FIND

Cart (0)

Store Finder Local Ad Gift Cards & Registry Track Orders Sign In/Create Account Help

7 results found for "motown"

All Items (61) Store Items (7)

Views: Grid List

Sort by: New

Items 1-7 of 7 total

**Motown 50 Fanthology (2CD)**  
by Various Artists  
Release Date: 09/01/2009  
Motown 50 Fanthology (2CD)

List Price: \$19.99  
Our Price: \$14.88  
You save: \$5.11 (26%)

ALSO IN MANY STORES

Availability:  
☒ Online  
☒ In-Store

**Now That's What I Call Motown**  
by Various Artists - Classic R&B  
Release Date: 01/13/2009  
Now That's What I Call Motown

List Price: \$19.99  
Our Price: \$14.88  
You save: \$5.11 (26%)

Availability:  
☒ Online  
☒ In-Store

**Motown Live: A Journey Through**  
**Hitsville USA (Music DVD) (Amaray**  
**Case)**  
by Boyz II Men  
Release Date: 12/09/2008  
Motown Hitsville USA Live (Music DVD)

\$19.98

Availability:  
☒ Online  
☒ In-Store

In Limited Stores



## Find it at a Target store



**Now: Motown**

ASIN: B002FMAOGQ    DPCI: 012-07-0152

Below are the nearest Target stores and current item availability information.

### Search Results for "91411"

Showing 1 to 8 of 8 results

**NOTE:** Prices, promotions, styles and availability may vary by store and online. We constantly strive to provide you with accurate item availability information, but because item quantities are constantly changing, the inventory information provided below is only an approximate indication of an item's in-stock status and an item's availability cannot be guaranteed.

Sort by:

DISTANCE	STORE	AVAILABILITY
0.52 miles	<b>Van Nuys</b> 5711 Sepulveda Blvd, Van Nuys, CA 91411 Phone: (818) 779-0163 Hours: M-Fr: 8:00am to 10:00pm; Sa: 8:00am to 10:00pm; Su: 8:00am to 9:00pm.	Available
2.42 miles	<b>Van Nuys North</b> 14920 Raymer St, Van Nuys, CA 91405 Phone: (818) 922-1001 Hours: M-Fr: 8:00am to 10:00pm; Sa: 8:00am to 10:00pm; Su: 8:00am to 9:00pm.	Available
5.03 miles	<b>North Hollywood</b> 11051 Victory Blvd, North Hollywood, CA 91606 Phone: (818) 761-3083 Hours: M-Fr: 8:00am to 10:00pm; Sa: 8:00am to 10:00pm; Su: 8:00am to 9:00pm.	Out Of Stock
5.19 miles	<b>Pacoima</b> 9725 Laurel Canyon Blvd, Pacoima, CA 91331 Phone: (818) 896-8214 Hours: M-Fr: 8:00am to 10:00pm; Sa: 8:00am to 10:00pm; Su: 8:00am to 9:00pm.	Limited Availability
6.89 miles	<b>Northridge</b> 8840 Corbin Ave, Northridge, CA 91324 Phone: (818) 772-0494 Hours: M-Fr: 8:00am to 10:00pm; Sa: 8:00am to 10:00pm; Su: 8:00am to 9:00pm.	Limited Availability
7.04 miles	<b>Granada Hills</b> 11133 Balboa Blvd, Granada Hills, CA 91344 Phone: (818) 360-2999 Hours: M-Fr: 8:00am to 10:00pm; Sa: 8:00am to 10:00pm; Su: 8:00am to 9:00pm.	Limited Availability
7.36 miles	<b>Woodland Hills</b> 20801 Ventura Blvd, Woodland Hills, CA 91364 Phone: (818) 713-2707 Hours: M-Fr: 8:00am to 10:00pm; Sa: 8:00am to 9:00pm.	Out Of Stock

**Exhibit 18**  
**Page 169**



10:00pm; Su: 8:00am to 9:00pm.

**7.42 miles**

**Burbank**

**VIEW MAP  
+ DETAILS**

1800 W Empire Ave, Burbank, CA 91504

Phone: (818) 238-0132

Hours: M-Fr: 8:00am to 10:00pm; Sa: 8:00am to 10:00pm; Su: 8:00am to 9:00pm.

**Out Of Stock**

**8.36 miles**

**Los Angeles Topanga**

**VIEW MAP  
+ DETAILS**

6700 Topanga Canyon Blvd, Canoga Park, CA

91303

Phone: (818) 746-9922

Hours: M-Fr: 8:00am to 10:00pm; Sa: 8:00am to 10:00pm; Su: 8:00am to 9:00pm.

**Available**







**UMG RECORDINGS, INC. v. MATTEL, INC.  
OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT 19  
TO TRIAL DECLARATION  
OF PETER CAPARIS**









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**Hot Wheels**

**Collector Edition**



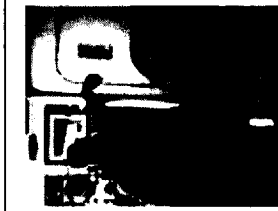
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**FASTBACK**

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**Wood Shop: A Look At The Real Larry's Garage™**



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Hot Wheels® designer Larry Wood tells tales of wild cars and even wilder road trips. [More...](#)

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**Mattel Launches a New Network -- One Big Happy Online Family!**



Connecting all the sites into one network! [More...](#)

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**Hot Wheels™**

RLC™ Only: 9/15/09, 9 AM PT

**HWC™**

If available: 9/16/09, 9 AM PT

**Sale starts in:**  
Days | Hrs. | Mins. | Secs.  
**3 19: 50 :46**



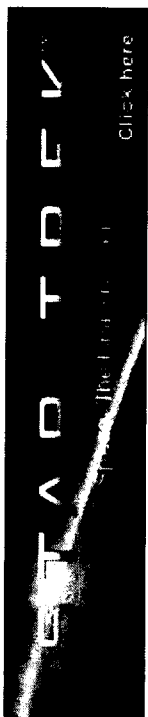
HWC™ Series Eight NEO-CLASSICS™  
**SUGAR CADDY™**

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Available NOW to ALL HWC™



- **End-of-Summer Sale ON NOW!**
- **Kmart Collector Day Event Returns September 19th**
- **Kmart 2009 HOT WHEELS® Collector Edition '67 Pontiac® GTO® Promotion**
- **Collected: The Hot Wheels® Classics 30-Car Set**
- **Introducing The Larry's Garage™ 21-Car Collection!**



**BOARD DISCUSSIONS**

What collectors are talking about today:

- New Wheels? - carwizard64
- => **WANTED: Rebel Rides '70 Mach 1 M...** - gr6120
- WE NEED A CHEVELLE FIVE PACK PLEASE** - carwizard64
- Loose Camaros - ca856
- Wal-Mart Redlines for trade....make... - nomar
- new classics series 5 chases - carwizard64
- WM redlines Ft - gtkp
- found new 2010 hot wheel pictures! - carwizard64
- L/F Larry's TRU Gasser - plaidbees
- New guy - hotwheeler0869
- question about the mail in vw fast ... - jha112897
- \*\*\*PLEASE POST YOUR BIRTHDAY HERE\*\*** ... - toys4uanme
- WalMart cars redline or tires with ... - six-pack
- Sweet Rides Dairy, 55 Panel & more ... - nomar
- Supers for Chase 59 Cadillac Funny ... - FuneralRacer
- SWEET RIDES SET f/t** - hunting4newhotwheels
- WM Full Redline Set & DD's & Camaro... - nomar
- 09 Redlines! - crushpup
- Limited Number of Stores - Kmart Co... - Bigdog6374
- "WHY, DO YOU COLLECT HOT WHEELS"** ... - Indio55

members

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1:18 Scale Ferrari FXX (black)

**HWCTM SNEAK PEEKS RLC™ SNEAK PEEKS**



Tooligan™ -- 2009 New Models

Sneak a peek at the latest Hot Wheels® products -- before they're available!

**CALENDAR OF EVENTS**

«	September 2009							»
S	M	T	W	T	F	S		
6	7	8	9	10	11	12		
13	14	15	16	17	18	19		
20	21	22	23	24	25	26		
27	28	29	30					



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Use of this site signifies your acceptance of the terms and conditions.

ADVERTISING - This website is dedicated to the promotion and sale of collectible Hot Wheels cars.

For comments on this Web site please write to [comments@hotwheelscollectors.com](mailto:comments@hotwheelscollectors.com)

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9/11/2009 12:08:15 PM

Find out what, when, and where hot events are happening



**UMG RECORDINGS, INC. v. MATTEL, INC.  
OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT 20  
TO TRIAL DECLARATION  
OF PETER CAPARIS**



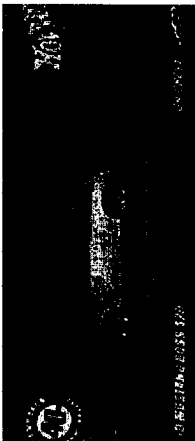
http://www.amazon.com - Amazon.com: Hot Wheels 40th Anniversary Motown Metal '70 Mustang Boss 429 1/64  
[http://www.amazon.com/Wheels-Anniversary-Motown-Mustang-Camaro/dp/B00136505U/ref=sr\\_1\\_17e=UTF8&s-toys-and-games&qid=1252612273&sr=8-1](#)

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**Hot Wheels 40th Anniversary Motown Metal '70 Mustang Boss 429 & '69 Chevy Camaro 1/64**  
 by Mattel  
 No customer reviews yet. [Be the first.](#)



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Price: **\$24.95**  
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 Ships from and sold by [game city](#).

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**Product Details**  
**Shipping Weight:** 12 ounces ([View shipping rates and policies](#))  
**ASIN:** B00136505U  
**Amazon.com Sales Rank:** #317,560 in Toys & Games (See [Bestsellers in Toys & Games](#))  
**Average Customer Review:** No customer reviews yet. [Be the first.](#)





***MOTOWN METAL™***



**UMG RECORDINGS, INC. v. MATTEL, INC.  
OPPOSITION NO. 91176791**

**UMG RECORDINGS, INC.**

**EXHIBIT 21  
TO TRIAL DECLARATION  
OF PETER CAPARIS**



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### Motown For Kids

Various Artists (Artist)

(3 customer reviews) | More about this product

List Price: ~~\$42.98~~

Price: **\$10.97** & eligible for **FREE Super Saver Shipping** on orders over \$25. Details

You Save: \$3.01 (22%)

Special Offers Available

**In Stock.**

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**Want it delivered Monday, September 14?** Order it in the next 21 hours and 22 minutes, and choose **One-Day Shipping** at checkout. Details

**26 new** from \$6.73   **6 used** from \$6.49

**Buy the MP3 album for \$9.49 at the Amazon MP3 Downloads store.**

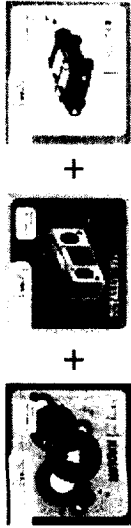
**More Buying Choices**

**32 used & new** from \$6.49

Have one to sell?

**Available to Download Now**

**Buy the MP3 album for \$9.49**



**Price For All Three: \$32.91**

Show availability and shipping details



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☒ **This item:** Motown For Kids ~ Various Artists

☒ Totally '80s for Kids ~ Various Artists



☒ Songs for the Car ~ Various Artists

### Special Offers and Product Promotions

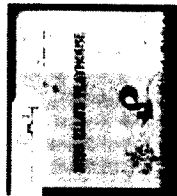
- Get \$1 worth of MP3 downloads from Amazon MP3 after you order your item. Here's how (restrictions apply)
- This item is part of our Music Deals Store, where you'll find extra savings on hundreds of CDs across all genres.

### Customers Who Bought This Item Also Bought



Songs for the Car ~  
Various Artists  
(2) \$10.97

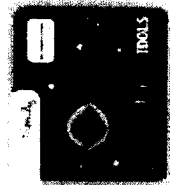
Back



Miss Ella's Playhouse ~  
Ella Fitzgerald  
(2) \$10.97

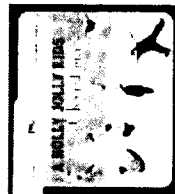


Jazz for Kids: Sing,  
Clap, Wiggle and Shake  
~ Various Artists  
(65)



Future Idols ~ Various  
Artists  
\$10.97

Next



A Holly Jolly Kids  
Christmas ~ Various  
Artists  
(6) \$9.98

### Product Details

Audio CD (August 19, 2008)



**Original Release Date:** August 19, 2008

**Number of Discs:** 1

**Label:** Motown / Universal

**ASIN:** B000YVJQZK

**In-Print Editions:** MP3 Download

**Average Customer Review:** (3 customer reviews)

**Amazon.com Sales Rank:** #5,951 in Music (See Bestsellers in Music)

Would you like to **update product info** or **give feedback on images**?

## Listen to Samples and Buy MP3s

Songs from this album are available to purchase as MP3s. Click on "Buy MP3" or view the MP3 Album.

[Listen to all](#) | Try our music sampler to hear song samples from this album.

### Samples



Song Title	Artist	Time	Price
1. Uptight (Everything's Alright)	Stevie Wonder	2:54	\$0.99
2. ABC	Jackson 5	2:57	\$0.99
3. Mickey's Monkey	The Miracles	2:45	\$0.69
4. Dancing In The Street	Martha Reeves And The Vandellas	2:39	\$0.99
5. Function At The Junction	Shorty Long	2:49	\$0.99
6. (I'm A) Road Runner	Jr. Walker & The All Stars	2:48	\$0.69
7. Please Mr. Postman	The Marvelettes	2:29	\$0.99
8. This Old Heart Of Mine (Is Weak For You)	The Isley Brothers	2:44	\$0.99
9. You Can't Hurry Love	The Supremes	2:53	\$0.99
10. Do You Love Me	The Contours	2:52	\$0.99



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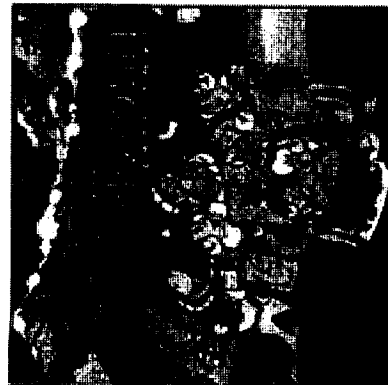
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## A Flintstones Motown Christmas

[Va-Flintones Motown Christmas](#)

([1 customer review](#)) | [More about this product](#)

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Have one to sell?

**7 new from \$2.99** **14 used from \$0.02**

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## Amazon's Va-Flintones Motown Christmas Store



Find all the CDs, MP3s, and vinyl, plus photos, videos, biographies, discussions, and more.

[Visit Amazon's Va-Flintones Motown Christmas Store](#)

**Customers Who Bought This Item Also Bought**

Exhibit 21  
Page 181





A Flintstones Christmas  
Carol DVD ~ Russi Taylor  
(30) \$8.49

## Product Details

**Audio CD** (October 5, 1999)

**Original Release Date:** October 5, 1999

**Number of Discs:** 1

**Label:** Umvd Special Markets

**ASIN:** B0000047ND

**Also Available in:** [Audio Cassette](#)

**Average Customer Review:** (1 customer review)

**Amazon.com Sales Rank:** #29,851 in Music (See [Bestsellers in Music](#))

Popular in these categories: ([What's this?](#))

#25 in [Music](#) > [Miscellaneous](#) > [Compilations](#) > [Holiday Music](#)

#88 in [Music](#) > [Miscellaneous](#) > [Holiday](#) > [Pop Vocal](#)

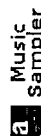
#100 in [Music](#) > [Miscellaneous](#) > [Holiday](#) > [Holiday Music](#)

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## Listen to Samples

To hear a song sample, click on "Listen" by that sample. Visit our [audio help page](#) for more information.

Try our music sampler to hear all song samples from this album:





**CERTIFICATE OF MAILING**

Date of Deposit: September 15, 2009

"Express Mail" mailing label number: EB 519288517 US

I hereby certify that this paper or fee, **DECLARATION OF PETER CAPARIS**, is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" on the date indicated above and is addressed to: UNITED STATES PATENT AND TRADEMARK OFFICE, Trademark Trial and Appeal Board , P.O. Box 1451, Alexandria, Virginia 22313-1451.



---

Alexa L. Lewis



**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Mitchell Silberberg & Knupp LLP, 11377 West Olympic Boulevard, Los Angeles, California 90064-1683.

On September 15, 2009, I served a copy of the foregoing document(s) described as **TRIAL DECLARATION OF PETER CAPARIS** on the interested parties in this action at their last known address as set forth below by taking the action described below:

Lawrence Y. Iser ( <a href="mailto:liser@kwikalaw.com">liser@kwikalaw.com</a> ) Direct (310) 566-9801 Direct Fax (310) 566-9861 Patricia A. Millett ( <a href="mailto:pmillet@kwikalaw.com">pmillet@kwikalaw.com</a> ) Direct (310) 566-9821 Direct Fax (310) 566-9870 Chad R. Fitzgerald ( <a href="mailto:CFitzgerald@kwikalaw.com">CFitzgerald@kwikalaw.com</a> ) Direct 310.566.9802 Direct Fax 310.566.9882 Kinsella, Weitzman, Iser, Kump & Aldisert LLP 808 Wilshire Boulevard, 3rd Floor Santa Monica, CA 90401 (310) 566-9800 Fax: (310) 566-9850	Counsel for Applicant, MATTEL, INC.
---	--

- ☐ **BY MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) addressed as set forth above, and deposited each envelope in the mail at Los Angeles, California. Each envelope was mailed with postage thereon fully prepaid.
- ☐ **BY OVERNIGHT MAIL:** I placed the above-mentioned document(s) in sealed envelope(s) designated by the carrier, with delivery fees provided for, and addressed as set forth above, and deposited the above-described document(s) with \_\_\_\_\_ in the ordinary course of business, by depositing the document(s) in a facility regularly maintained by the carrier or delivering the document(s) to an authorized driver for the carrier.
- ☒ **BY PERSONAL DELIVERY:** I placed the above-mentioned document(s) in sealed envelope(s), and caused personal delivery by \_\_\_\_\_ of the document(s) listed above to the person(s) at the address(es) set forth above.
- ☐ **BY ELECTRONIC MAIL:** I served the above-mentioned document electronically at \_\_\_\_\_.m. on the parties listed at the email addresses above and, to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.
- ☐ **BY FAX:** On \_\_\_\_\_, at \_\_\_\_\_ am/pm, from facsimile number (310) \_\_\_\_\_, before placing the above-described document(s) in sealed envelope(s)



addressed as set forth above, I sent a copy of the above-described document(s) to each of the individuals set forth above at the facsimile numbers listed above. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine, and a copy of that report is attached hereto.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on September 15, 2009, at Los Angeles, California.

  
Kimberly Stewart